

1 CLOUD 5/2/2019

2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE NORTHERN DISTRICT OF GEORGIA

4 ATLANTA DIVISION

5 In re:

6 SOUTHEASTERN HOSPITALITY, LLC

7 Debtor.

8 -----X

9 Case No. 18-67291-pmb

10
11 30(b)(6) DEPOSITION OF SOUTHEASTERN HOSPITALITY'S

12 WITNESS EARL E. CLOUD, III

13 Atlanta, Georgia

14 Thursday, May 2, 2019

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18
19
20 Reported by:

RANDI J. GARCIA, CSR, RPR

21 Job No.: 160113

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2
3
4 May 2, 2019

5 Atlanta, Georgia

6 30(b)(6) Deposition of Southeastern
7 Hospitality's witness EARL E. CLOUD, III,
8 taken by Jamestown PCM Master Tenant, LP, at
9 Rountree Leitman & Klein, LLC, Century
10 Plaza I, 2987 Clairmont Road, Atlanta,
11 Georgia, before Randi J. Garcia, Registered
12 Professional Reporter, and Notary Public, on
13 May 2, 2019, beginning at approximately 10:33
14 a.m., when were present on behalf of the
15 respective parties:

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A P P E A R A N C E S:

For Jamestown PCM Master Tenant, L.P.:

BY: MATTHEW LEVIN, ESQ.

SCROGGINS & WILLIAMSON

4401 Northside Parkway

Atlanta, GA 30327

For the witness and Southeastern
Hospitality.:

BY: SAMANTHA TZOBERI, ESQ.

ROUNTREE LEITMAN & KLEIN

2987 Clairmont Road

Atlanta, GA 30329

For Global Financial.:

BY: SAMANTHA GUNNISON, ESQ.

DIMENT PORTERFIELD

412 Adamson Square

Carrollton, GA 30117

I N D E X

WITNESS:

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2 EARL E. CLOUD, III

3 after having been first duly sworn, was
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. LEVIN:

7 Q. We are here today for the Federal
8 Rules of Civil Procedure 30(b)(6) deposition of
9 Southeastern Hospitality LLC, which I will
10 refer to going forward as the "Debtor".

11 A. Sure.

12 Q. And in connection with the Debtor's
13 motion to assume certain real property lease by
14 and between the Debtor and Jamestown PCM -- all
15 caps -- Master Tenant LP, which I will refer to
16 going forward as "Jamestown".

17 A. Sure.

18 Q. And also, a certain storage space
19 license agreement that has also been -- or
20 sought to be assumed between Debtor and
21 Jamestown.

22 Can you, sir, identify yourself for
23 the record.

24 A. Earl E. Cloud, III. I'm called
25 Brooks by most people. You can call me

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2 whatever you want.

3 Q. Mr. Cloud, this is a deposition of
4 Southeastern Hospitality, LLC. If at any point
5 you want to take a break while we are doing
6 these questions, this is not meant to be an
7 endurance contest. If you need to take a
8 break, take a break. I would only ask if you
9 ask to take a break, if there is a question
10 pending, you answer that question first before
11 taking a break.

12 A. Sure.

13 Do you have a sense of how long
14 you're going to need today?

15 Q. Depends on how quickly we get through
16 the answers and how much you have to say. But
17 I don't anticipate going the full four hours.

18 A. Sure.

19 Q. But a couple of hours, I would
20 suspect, at least. I don't know if counsel at
21 the end of the table has any questions.

22 A. Okay.

23 Q. I'm going to ask a lot of questions.
24 And I would ask that if you do not understand a
25 question, ask me to restate it or clarify it.

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2 If you answer the question, I'm just going to
3 assume you understood it; is that fair?

4 A. Sure. Sure.

5 MS. TZOBARI: Are we reserving
6 objections?

7 MR. LEVIN: Sure, except as to form.
8 (Thereupon, Exhibit 1 was marked for
9 identification.)

10 BY MR. LEVIN:

11 Q. Mr. Cloud, I handed you what you has
12 been marked as Exhibit 1 to this deposition.
13 And it is an Amended Notice of Rule 30(B)(6)
14 Deposition of Southeastern Hospitality, LLC.
15 Have you seen Exhibit 1 before?

16 A. I have not.

17 Q. You haven't seen this?

18 This is a deposition notice requiring
19 the attendance of a representative of
20 Southeastern Hospitality, LLC. If you look at
21 the second sentence of Exhibit 1 that begins
22 with, "Pursuant to Federal Rule 30(b)(6) the,
23 matters on which Southeastern shall be deposed
24 include, and there is a list of various topics.

25 Do you see that sentence?

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2 A. Uh-huh. I knew we had a deposition.

3 Q. Are you the Debtor's designated
4 representative to testify at this 30(b)(6)
5 deposition?

6 A. I am.

7 Q. Are you prepared to testify on behalf
8 of the debtors to all the topics listed in this
9 notice?

10 A. To the best of my ability, yes.

11 Q. And are you generally the person most
12 familiar with the Debtor's knowledge with
13 respect to the topics?

14 A. That's correct.

15 Q. Please tell me your current position
16 with the Debtors.

17 A. I'm the managing member.

18 Q. The managing member. And do you have
19 any other title, like CEO or CFO, anything like
20 that?

21 A. I don't.

22 Q. And is the Debtor an LLC?

23 A. Yes.

24 Q. And how many members are there?

25 A. There are four.

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2 Q. And you're the designated managing
3 member?

4 A. The majority shareholder, yes.

5 Q. When was the Debtor formed?

6 A. It was formed in mid 2015. The exact
7 date escapes me but we opened for business on
8 January 12, of 2016, so it would have been
9 formed, you know, four to five months prior.

10 Q. Okay. And has your position always
11 been managing member with the Debtor?

12 A. It has.

13 Q. I think you said that there were four
14 members and that you owned the majority shares.
15 How much is your percentage?

16 A. I believe it's 51 percent currently.

17 Q. And was that -- was it always
18 51 percent?

19 A. We had a partner retire due to
20 illness, and so we absorbed some of his and it
21 changed. I don't remember exactly off the top
22 of my head. It is sort of a pending thing. He
23 had some pretty serious illnesses and he could
24 not continue. And so we are trying to work
25 that out. So it could change, but it hasn't

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2 changed.

3 Q. Well, let me take a step back. At
4 formation, who were the four members?

5 A. Myself, Dau Investments, which is our
6 investor, Mike Blydenstein, Julian Goglia and
7 Drew Smith.

8 Q. That's five total members?

9 A. Me plus four.

10 Q. You plus four. Have the percentage
11 of ownership -- well, what was your percentage
12 of ownership at the time?

13 A. 56.

14 Q. 56. So you sold or your --

15 A. Diluted.

16 Q. -- diluted 5 percent of your
17 membership?

18 A. Yeah.

19 Q. Now, sir, I think you're aware we are
20 here today in connection with a motion the
21 Debtor filed to --

22 A. That's the future, just to clarify.
23 That is the future. 51 percent would be the
24 future ownership, once we sort of get through
25 that hurdle, which we haven't done all that

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2 yet. But I guess I answered off the top of my
3 head. 56 is what is on the file.

4 Q. Okay. But you anticipate that it
5 will be 51 percent at some point --

6 A. Correct. We will follow whatever
7 process is required to, you know...

8 Q. Understood. Understood.

9 And I should stop here and say I
10 don't mean to cut you off with any questions.

11 A. Sure.

12 Q. If you have more to say, by all
13 means, just tell me.

14 A. Go for it.

15 Q. I tend to talk fast. If there is a
16 pause, I might just move on. But if there is
17 anything you need to clarify or answer further,
18 by all means, just let me know.

19 I was starting to say, we are here
20 today in connection with the Debtor's motion to
21 assume the lease and the storage space license
22 agreement with Jamestown. Are you familiar
23 with those documents?

24 A. Uh-huh.

25 Q. Are you familiar with the motion?

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2 A. Which motion? This?

3 Q. The motion to assume the leases.

4 A. Yes. I don't have them memorized,
5 but yes.

6 Q. Hope not.

7 Mark this.

8 (Thereupon, Exhibit 2 was marked for
9 identification.)

10 BY MR. LEVIN:

11 Q. Mr. Cloud, I've handed you a document
12 labeled Exhibit 2 to the deposition. And this
13 is -- or purports to be the Debtor's motion to
14 assume on expired lease pursuant to Section
15 365.

16 Have you seen Exhibit 2 before?

17 A. I have read this, yes.

18 Q. You have read that?

19 A. It's been a while but, yes.

20 Q. Again, little rules of the road. You
21 need to answer verbally to any question I have,
22 not nodding your head or shaking your head
23 because this is being taken down
24 stenographically.

25 A. Sure. It's my first time doing this.

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2 Q. Understood. It's a process.

3 Definitely.

4 There are various factual allegations
5 contained in Exhibit 2. Were you the source of
6 those allegations, to the best of your
7 knowledge?

8 A. Could you be specific about which
9 allegations?

10 Q. Sure. Let's start with the -- let's
11 start with the exhibits to the motion. If you
12 will flip -- you see the page numbers at the
13 top of the document?

14 A. The top, yes.

15 Q. If you would flip to page 8 of 30.

16 A. Okay.

17 Q. And this document attached as
18 Exhibit 1 is a document entitled, "Restaurant
19 Lease Agreement."

20 Do you see that?

21 A. Yes.

22 Q. These are sort of shrunken down.
23 Does this appear to be the lease between the
24 Debtor and Jamestown?

25 A. It does.

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2 Q. If you would flip to page 28 of 30.
3 This is Exhibit 2, Storage Space License
4 Agreement.

5 Does this appear to be the license
6 agreement for the storage space at Ponce City
7 Market between the Debtor and Jamestown?

8 A. It does.

9 Q. And are you the signatory on both of
10 these documents, first for the Debtor? That is
11 to say, the lease and the storage space license
12 agreement.

13 A. I am.

14 Q. Did you personally guarantee the
15 Debtor's obligations under the lease?

16 A. I did.

17 Q. What was your understanding of why
18 you were being asked to execute a guarantee?

19 A. Because I'm a principal shareholder
20 of the corporation.

21 Q. Okay. Did -- was that a condition,
22 to your knowledge, Jamestown being willing to
23 enter into the lease?

24 A. To my knowledge, it was required,
25 yes.

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2 Q. Okay. We're going to go back to
3 Exhibit 2 here in a second.

4 A. This one (indicating)?

5 Q. Yeah. Hold on to that. Clear up one
6 issue first.

7 Mark that as Exhibit 3.

8 (Thereupon, Exhibit 3 was marked for
9 identification.)

10 BY MR. LEVIN:

11 Q. This is Exhibit 3. I hand you what
12 has been marked as Exhibit 3. This appears to
13 be a document entitled guaranty.

14 Is this the guaranty that you
15 executed of the lease between Jamestown and the
16 Debtor?

17 A. Appears to be.

18 Q. And on page 3 of that document, is
19 that your signature on the guaranty?

20 A. Yes.

21 Q. Now, what business does the Debtor
22 operate out of this space covered by the
23 restaurant lease?

24 A. The d/b/a.

25 Q. What is the business? What is the

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2 nature --

3 A. It's a restaurant.

4 Q. The restaurant goes by a name?

5 A. It is called Mercury.

6 Q. And has the business that has been
7 operated out of that space always been the
8 Mercury?

9 A. It has.

10 Q. Turning back to Exhibit 2. If you
11 can turn to page -- this is Exhibit -- that is
12 Exhibit 2. Turn to page 4.

13 A. Top numbers?

14 Q. Yeah. My bad.

15 A. You will always be referring to the
16 top numbers?

17 Q. I will, at least with this document.
18 If you look at paragraph 7, which
19 appears on that page toward the top. Read that
20 paragraph to yourself.

21 A. What is your question?

22 Q. My question is, were you the source
23 of these factual allegations contained in this
24 paragraph?

25 A. Yes. I mean, let me clarify it.

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2 Both of our restaurants were used as security
3 to attempt to gain more funds to continue the
4 operations of the failed business in Buckhead.
5 I don't think we got super specific about, you
6 know, it was sort of cross corp. Everything
7 was kind of cross corped, so it is a little
8 unfair to say that the Mercury on its own
9 secured all of the debt.

10 It was really just sort of -- it was
11 a three-alarm fire and we were trying to put it
12 out. I don't know if that makes a difference
13 to you, but it's accurate.

14 Q. When you say "cross corp", what do
15 you mean by that?

16 A. It means that when we would go to
17 secure fund or attempt to, I had to protect --
18 I had to secure, to give security through
19 whatever means I had, which were the two
20 healthy restaurants that I had, Pinewood and
21 Mercury.

22 It wasn't 100 percent of the
23 liability on Mercury. It was me personally.
24 It was our partners. It was that business and
25 it was our other business. It was whatever

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2 they could -- you know, whatever security we
3 had was pledged.

4 Q. Okay.

5 A. In some cases.

6 Q. And you're referring specifically to
7 the second sentence in paragraph 7 that says,
8 "The Mercury, however, incurred approximately
9 \$1 million in debt" --

10 A. The "approximately" is important.

11 Q. Did you read this motion before it
12 was filed?

13 A. I did.

14 Q. Did you attempt to correct this
15 issue?

16 A. I mean, approximately is
17 approximately. So it's approximately correct.

18 Q. Okay. Now, the first sentence of
19 that paragraph reads, "From its inception in
20 2015 the Mercury has been a successful
21 restaurant consistently cash flowing in the
22 positive."

23 What does the Debtor mean by that
24 statement?

25 A. That we've met all our obligations

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2 and that we are consistently considered one of
3 the more well thought of places in town,
4 according to, you know, all of the food media
5 and our reviews. It's a well-reviewed
6 restaurant. Not everyone in the world likes
7 us, but enough that we consistently make it on
8 top 10 cocktail bars in the city lists. And,
9 you know, we have had a fairly successful go,
10 even today. It is still mostly -- we've had
11 our bumps and bruises along the way with this
12 mess, but we're still, I think, a relevant
13 concern.

14 Q. So when you say successful
15 restaurant, you mean then that the restaurant
16 has been well reviewed, well received by the
17 public. Successful doesn't necessarily refer
18 to the Debtor's financial performance?

19 A. Well, I mean, keep in mind that we
20 are a very, very small organization. When we
21 began our process to expand, and we were very
22 clear with Jamestown, where -- how big we were.
23 We were a small operation with one location in
24 Buckhead. And they wanted a cocktail tenant.
25 I don't know which -- whether we are first,

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2 third or fifth on the list, but at that time
3 there were only about three or four places in
4 town, three or four groups in town that did
5 that well. We were one of them.

6 I know -- we know those other people
7 very well. And I don't know this specifically
8 but I know that they were working on other
9 projects at the time. What would be
10 considered -- you know, if you were to say
11 there were three or four groups in town that
12 did this well, we knew that two or three other
13 ones were in the middle of other projects. So
14 if they were approached by Jamestown, they
15 probably were not able to move forward with
16 something. That would be conjecture, but that
17 is my opinion.

18 So they were very, very, I guess,
19 deliberate about wanting us to be involved.
20 And there were two or three times that I recall
21 having conversations with the asset manager
22 where I said we could not go forward, because I
23 didn't think we had enough money to do it.

24 So when we opened in January of '16,
25 we were running on fumes financially. It was

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2 tough. It was very tough. It was our biggest
3 project we've ever done.

4 They were supportive and they were
5 helpful, Jamestown was. I remember vividly --
6 but it is in the lease -- we got sort of
7 blindsided by this, what's the technical term?
8 It is a specific time type of hood that is way
9 more expensive than what the statute -- not the
10 statute, but the city requires a certain kind
11 of vent hood as required to open a restaurant.
12 That's what the permit -- code calls for.

13 Jamestown, because of the nature of
14 the building, wanted to have basically a
15 vapor -- a system where vapor escapes and
16 nothing else. Instead of smoke coming off the
17 line, it would be water vapor.

18 Well, that was expensive. It was
19 about 75,000 more than what was required by
20 code. And through the lack of experience and
21 the hustle and bustle of opening a restaurant,
22 and having a million-dollar construction
23 project, I didn't understand the difference
24 between what they required and what the code
25 required. So I had been operating under the

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2 assumption that we were going to have about a
3 35,000 vent hood. That's what I budgeted.
4 That's what I told our architects.

5 So once the architect got into the
6 weeds on this, they came to me and said,
7 actually you're going to need this other one.
8 And this one is going to cost a lot more. We
9 didn't have another \$75,000 to spend. We were
10 very tight.

11 So I went to Jamestown, and
12 graciously, they agreed to sort of fund that
13 and roll it into our lease. And we ended up --
14 that was one example of how we sort of worked
15 together to sort it out. But they wanted us,
16 and they wanted a cocktail tenant, and we were
17 uneasy about going into it. But we wanted to
18 do it. Absolutely.

19 And we just didn't want to fail. And
20 we just didn't feel like we had a large war
21 chest. And so they were supportive in some
22 ways and not as easy in some other ways. But
23 we made it. We made it there, and we had a
24 fairly successful first year. But it's hard.
25 It is very hard to run a restaurant.

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2 To answer back to your question.

3 Just because we're successful and busy doesn't
4 mean we are necessarily financially successful.

5 Because there's a thousand moving pieces
6 running a restaurant. Your labor cost, which
7 is known as your controllable cost, typically
8 run about 60 to 70 percent of what your
9 operation is, meaning the food, alcohol,
10 maintenance and labor typically runs between 60
11 and 70 percent controllable cost.

12 Well, there are 60 people that could
13 impact that on any minute of any day. And
14 getting that efficient is sometimes very
15 difficult. And with the constant flow of new
16 people and people leaving and the nature of
17 restaurants, it is not always easy to get as
18 efficient as we would like. So the revenue
19 could be there. And the reviews could be
20 there. And the PR could be there, but the
21 profit might not.

22 Q. So that was a lot, and I certainly
23 don't want to put words in your mouth.

24 A. I just want to answer the question.

25 Q. Sure. When you say or when the

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2 Debtor says that the Mercury had been a
3 successful restaurant, again, just to clarify,
4 that doesn't necessarily mean financial
5 success. It may mean success in other ways?

6 A. Up until we started the second -- the
7 third project, our third restaurant project,
8 I'm not aware of any meaningful issues with our
9 bills, specifically rent. To my knowledge, we
10 were always on time, or close to it. We might
11 have missed -- been a day off or something. I
12 don't know that we ever had a default issue. I
13 don't know that we ever had a maintenance
14 issue. I'm not aware -- I saw discovery -- if
15 you look, most of that starts right when this
16 third project begins.

17 Then, you know, all hell broke loose,
18 to be honest with you. It was very difficult.
19 So many of the problems that stemmed from why
20 we are sitting here today was because of that
21 -- that reality. So before that, I mean, we
22 didn't have problems.

23 Q. And what was the time frame of when
24 the problems started to occur?

25 A. Around the middle of the second

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2 quarter 2017.

3 Q. So sometime --

4 A. Thereabouts.

5 Q. -- in the April/June time frame 2017?

6 A. Correct.

7 Q. Later in that sentence the Debtor
8 says that the Mercury had been consistently
9 cash flowing in the positive.

10 Is that accurate in the sense of you
11 always have positive cash flow or did that
12 change at any point in time?

13 A. I guess this is up for everyone's
14 interpretation on how they view that term. I
15 view that as do we -- do we comfortably pay our
16 obligations? That is what I consider. We were
17 comfortably paying our obligations.

18 Q. Up until April, May, June of 2017?

19 A. Correct. To the best of my
20 knowledge.

21 I mean, I have 100 people who work
22 for me. If I tell our director of operations
23 to pay rent and she didn't pay it till the 2nd,
24 I might not know about that. But if Jamestown
25 didn't tell me about that or they told -- or

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2 the letter was delivered to Lindsay, I might
3 not know about that. She might not tell me she
4 got a notice from Jamestown, because she might
5 have forgotten and, you know, so this whole
6 universe -- if I had a default notice, it
7 wouldn't necessarily always reach me in certain
8 circumstances. But to the best of my
9 knowledge, we met our obligations.

10 Q. Again, until that April, May, June
11 time frame?

12 A. Correct. Then things got hairy.

13 Q. Do you know whether the Debtor, on an
14 accounting basis, every year turned a profit?

15 A. Yes. In year one we turned a profit.

16 Q. What about year two?

17 A. Year two we did not.

18 Q. Year two would have been 2017?

19 A. Correct.

20 Q. And year three 2018, did you turn a
21 profit then?

22 A. It's very difficult to -- so let me
23 try to answer this in the best and most
24 accurate way.

25 As we were scaling up to open our

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2 third restaurant, which was technically two
3 brands, because it was a coffee shop, so
4 technically four -- it was going to be what we
5 were running. And in the middle of that we had
6 expanded another restaurant and took on the
7 neighboring space.

8 To go from one to two was a pretty
9 big adjustment. It's kind of like kids. It's
10 kind of like that. We went from one to two and
11 we grew well. From three -- from two to three
12 was massively more difficult. It was
13 overwhelmingly more difficult. And we didn't
14 anticipate how difficult it would be from a
15 dilution of management and dilution of
16 leadership. So we began to add staff.

17 Well, we're still six months out from
18 the restaurant opening and having any positive
19 cash flow from that. So the Mercury and the
20 other restaurants had to, in effect, pay the
21 payroll for this larger operation that was
22 going to be present later.

23 And so to say that it -- it is
24 difficult to answer the question is what I'm
25 saying. If we had never expanded the Mercury

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2 and Pinewood and our other operations, we would
3 have never hired those people and we would
4 never have needed those people. And so we
5 wouldn't have had the cost of those people.

6 If we were to be successful, we would
7 have needed them. So it's a chicken or the egg
8 thing. So what do you do? You hire the
9 people? It was \$280,000 in payroll. We scaled
10 it up over time. It put a strain on the
11 company that way.

12 But it's also, that \$280,000 in
13 payroll is not like those people didn't do
14 anything for the other restaurants as well.
15 They benefited Mercury. And it was nice to
16 have more staff and more leadership, but
17 100 percent of that payroll obligation was not
18 specifically for Mercury or Pinewood or anyone.

19 We were going from a small group to a
20 large group, and the transition was, you know,
21 difficult.

22 Does that answer the question?

23 Q. It does.

24 A. I'm not trying to be evasive.

25 Q. No, no, I don't think you are.

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2 Let me ask -- let me ask you to first
3 take a step back. In the last few minutes you
4 referenced "we" a lot.

5 Who is "we"?

6 A. The 100 people who run the restaurant
7 with me, or 99 other people.

8 Q. You say we were opening another
9 restaurant. We were doing this. Is this all
10 Southeastern --

11 A. You can't do it by yourself.

12 Q. That's not my question.

13 My questions is, when you say "we,"
14 does that mean Southeastern Hospitality, LLC or
15 is it something different?

16 A. Through the advice of our accounting
17 people team, which is Aprio -- I don't know if
18 you're familiar with them but I think they're
19 some of the best guys in town -- they have a
20 restaurant and hospitality division. And I
21 work specifically with Tommy Lee. And I sat
22 down with them and we developed a strategy.

23 And so the strategy was that we would
24 engage with Acuity CFO, which is basically CFO
25 services for hire, and we would get our

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2 financials in pristine condition, and we would
3 go try to have a cap raise that would be, you
4 know, much larger to be able to sort of absorb
5 and move this from a small operation to a large
6 operation within sort of a corporate entity
7 called 10 Apart Hospitality, which we formed
8 along the way, that was going to basically
9 firewall the LLCs from employment problems.

10 Because we had some employment risk
11 connected to workmans' comp, and connected to
12 various things.

13 His recommendation was, and the CFO's
14 recommendation was, have your corporate entity
15 create it so that that could be where you pay
16 payroll, but it has no revenue, so you can sort
17 of protect the restaurants from any liability.
18 And that was the strategy.

19 So that's where we were headed. So
20 we weren't headed from -- to a structure where
21 one organization was going to own all the
22 entities or own or operate all the entities,
23 but we were headed for a structure where there
24 would be a corporate entity that would be an
25 operational entity that the company would pay

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2 its staff -- so everyone would work for 10
3 Apart Hospitality. The healthcare could be,
4 you know, you would have some scale for
5 healthcare reasons. We would be able to
6 compete for a better rate and all these
7 different benefits. So that is where we were
8 headed.

9 So when I say "we", I mean, we had
10 one leadership group that was running all the
11 restaurants. But we had -- but the ownership
12 was different in every entity. The financial
13 situation was different in every entity.

14 Like, for example, Pinewood was owned
15 stock 100 percent by me. I was the single
16 member LLC at the time. And my partners owned
17 their -- it was a profits interest is what they
18 had. They had basically, for lack of a better
19 word, it was a complicated employment
20 agreement.

21 Anyway, best laid plans, but we
22 didn't -- we never quite made it to that.
23 Things got sideways before we really got that
24 transition.

25 Q. Has the Debtor ever produced -- just

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2 to be clear, when I say the Debtor, I'm
3 focusing specifically on Southeastern
4 Hospitality, not the entity?

5 A. Any other thing.

6 Q. You may own Pinewood, or the bar, or
7 10 Apart, or any of that stuff. I'm just
8 focusing on, when I say the Debtor, has the
9 Debtor ever produced audited financial
10 statements?

11 A. Have we ever produced them?

12 Q. Yes.

13 A. I mean, would what we produced to
14 file our taxes count?

15 Q. No. I'm talking about like in a
16 formal audited financial statement from an
17 accountant or an accounting firm.

18 A. I'm not sure if we ever did. I don't
19 think so.

20 Q. You mentioned earlier in one of your
21 answers, you said you get our financial
22 statements in pristine conditions. What are
23 you referring to when you say financial
24 statements?

25 A. The Acuity CFO team was specifically

1 CLOUD 5/2/2019

2 brought on to help us get a fundraise to
3 refinance all of our debt. That was the point
4 of it.

5 I don't know that they produced a
6 quote/unquote, you know, audited statement.
7 But they did produce a lot of statements, a lot
8 of materials.

9 Q. So unaudited?

10 A. Yes. I would say that that was
11 specifically for fundraise. And that -- those
12 materials were then sent off to -- I don't
13 know -- three or four different groups that
14 were specialized in raising capital.

15 Q. What was the time frame that Acuity
16 was doing all of this?

17 A. When was this? When did we engage
18 with them?

19 Q. Yes.

20 A. I would say first quarter of '17.

21 Q. First quarter of 2017?

22 A. That's my recollection, but I could
23 be wrong.

24 Q. How long were they sort of on the
25 job, if you will?

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2 A. They stayed engaged with us until
3 about the end of '17.

4 Q. Through 2017 they were engaged in
5 trying to --

6 A. Be our CFO, for lack of a better
7 word, and help us get on the right track.

8 Q. I noticed in one document I reviewed
9 that the Debtor employed the accounting firm of
10 Habif, Arogeti & Wynne.

11 H-A-B-I-F-A-R-O-G-E-T-I- ampersand W-Y-N-N-E.

12 A. Which is now Aprio. They changed
13 their name.

14 Q. Okay. That was --

15 A. HAW is now Aprio. Same group, same
16 people.

17 Q. Okay. So the references in the
18 accounting documents you provided to us through
19 discovery, any payments to Habif Arogeti is
20 really payment to Aprio?

21 A. Aprio. I don't remember when they
22 changed their name, but somewhere along the way
23 they changed their brand. It's just a rebrand
24 of it. It's -- for all I know -- as far as
25 know, it is exactly the same company, just a

1 CLOUD 5/2/2019

2 new name.

3 Q. Aside from that Aprio, whatever name
4 it may have --

5 A. HAW.

6 Q. -- has the Debtor employed any other
7 accounting firms?

8 A. Unless you count Acuity CFO, I don't
9 know how you would define them, but not to my
10 knowledge.

11 Q. And again, what did Acuity do for the
12 Debtor?

13 A. They created systems for us to do how
14 our -- trained our controller. That was when
15 we went from a bookkeeper that was part time to
16 having a controller inside the business. They
17 trained him. They sort of oversaw him. They
18 made sure that the financials and the reporting
19 and all the P & Ls and balance sheets were, you
20 know, were done to the standard that HAW and
21 Aprio and them thought was necessary.

22 So I didn't get into the weeds on
23 what they wanted. I just said, Hey, whatever
24 Tommy and his team need CPA-wise, whatever they
25 need, let's make sure we're communicating.

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2 So the goal was to have really strong
3 financials that were accurate and that would
4 lead us to be able to raise capital and get our
5 company, you know, down the road of success.
6 At the time I thought I was making a good
7 decision.

8 Q. And how long -- what was the time
9 frame Acuity was engaged? Was that the same
10 time frame, 2017?

11 A. They've been involved -- we have been
12 with them for a long time. I would say we
13 found them the second year we were in business,
14 which would have been '13.

15 Q. I'm sorry?

16 A. 2013.

17 Q. 2013.

18 A. When we were just one restaurant.

19 Q. Again, the "we" doesn't refer to
20 Southeastern Hospitality in that regard?

21 A. That is just -- I say we when I'm
22 involved. The business is we, not me. That is
23 just personally.

24 Q. When Southeastern Hospitality was
25 formed in 2015, was Acuity then performing

1 CLOUD 5/2/2019

2 services consistently from then on for
3 Southeastern as well?

4 A. Acuity has only been engaged since
5 '17. Aprio/HAW has been engaged since its
6 inception. So Aprio would have -- our
7 accounting firm started when we didn't have the
8 Mercury. So the Mercury has never had a
9 different accounting firm.

10 Does that answer your question?

11 Q. I think so.

12 Does Acuity still perform services
13 for the Debtor?

14 A. Acuity does not.

15 Q. Does Aprio?

16 A. It does. We would like them to, but
17 we just can't afford it right now.

18 Q. These services that were being
19 provided, were those services being provided
20 just to Southeastern or to all of the
21 restaurants --

22 A. All.

23 Q. -- that you're associated with?

24 A. All.

25 Q. Has the Debtor filed all of its tax

1 CLOUD 5/2/2019

2 returns for 2015 through 2018?

3 A. We haven't filed '18. We filed an
4 extension, but up to '17.

5 Q. So '15, '16, '17 you filed?

6 A. Yes.

7 Q. Did the Debtor report a profit on any
8 of those tax returns?

9 A. Year one, '16, we did.

10 Q. '17 reported a loss?

11 A. Yes.

12 Q. And '18, do you --

13 A. A loss, pretty certain of that.

14 Q. Back to paragraph 7, the second half
15 of that paragraph is what we were starting to
16 talk about a little bit earlier, the incurring
17 of approximately a million dollars in debt.

18 Do you know how much the Mercury
19 itself incurred, was obligated on?

20 A. Currently or at the time?

21 Q. At the time.

22 A. At the time, I don't. I mean, in all
23 honesty, it was a -- it's like your house is on
24 fire and you have one bucket of water; which
25 room do you throw it out? That is what it was

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2 like. It was chaotic and it was desperate. I
3 don't remember.

4 Q. You couldn't, sitting here today,
5 tell me specifically --

6 A. I could get you the information
7 you're asking for. We have it somewhere in all
8 this pile of stuff, but off the top of my head,
9 no.

10 Q. Do you know how many loans there
11 were, how many separate loans?

12 A. Total or specific to Southeastern
13 Hospitality?

14 Q. Specific to Southeastern Hospitality.

15 A. Before -- before this, loans that it
16 had before it had loans that were connected to
17 the expansion?

18 Q. I'm referring, again, and I really
19 should be clear about this. I think I have
20 been, but let me try again. I don't really
21 care what --

22 A. Happened.

23 Q. -- what happened --

24 A. I understand.

25 Q. -- what you did with your other

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2 restaurant or the Pinewood or the bar or
3 anything else.

4 All my client cares about is the
5 Debtor, which is Southeastern Hospitality.

6 A. Well, then let me answer the
7 question. If you're asking me if nothing -- if
8 you could have Mercury in a vacuum firewalled
9 from all the other problems, would we be a
10 successful restaurant? Yes.

11 Q. I just want to know how much debt the
12 Mercury --

13 A. I don't know.

14 Q. What was the time frame these loans
15 that are referenced in paragraph 7 were taken
16 out?

17 A. I mean, 2017.

18 Q. 2017.

19 And where did all that money go?

20 A. It went to fund the operations of all
21 the restaurants.

22 Q. So --

23 A. Including Mercury.

24 Q. So the Debtor incurred loans,
25 incurred debt, took out loans of some amount.

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2 And the proceeds of those loans were to pay the
3 expenses, not only of the Debtor, but of other
4 restaurants in your restaurant group?

5 A. It's difficult to separate them
6 because it's not really fair to separate them
7 because each restaurant, including the Mercury,
8 enjoyed the economies of scale of that larger
9 operation for some period of time.

10 So to say that this was a 100 percent
11 just saddling Mercury with costs that it didn't
12 deserve is not fair because we went from a
13 bookkeeper that was coming in four hours a week
14 -- four hours a month, to someone there all the
15 time. That made the Mercury better.

16 Having a full-time staff that can
17 focus on these things that we were having
18 part-time staff do before made the Mercury
19 better. So it is not really accurate to say
20 that, you know, this is so separate. It's just
21 not.

22 Q. That wasn't my question. I mean, I
23 understand what you're saying, but my question
24 really is -- again, I'm just focusing on this
25 Debtor.

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2 A. I understand.

3 Q. That's the only one obligated to my
4 client. This Debtor, as I understand it, in
5 2017 took out loans in some amount from various
6 parties, and some of that money, I assume, went
7 to pay expenses for the Debtor, whether in the
8 form of direct expenses or whether in the form
9 of centralized management and stuff.

10 A. Sure.

11 Q. But did some of that money go to pay
12 the expenses of other restaurants that were not
13 associated --

14 A. I'm sure it did, yes.

15 Q. Is all of this reflected in the books
16 and records of the Debtor?

17 A. I mean, to be completely forthright
18 and honest, our books are a little shaky right
19 now because we did lose Acuity along the way
20 due to bankruptcy. So we have been trying to
21 piece that back together. We are trying, but
22 not we are not there yet.

23 (Thereupon, Exhibit 4 was marked for
24 identification.)

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BY MR. LEVIN:

Q. This is Exhibit 4. Mr. Cloud, I've handed you what has been marked as Exhibit 4 to this deposition. Those are the Southeastern Hospitality, LLC schedules filed in the bankruptcy case 18-67291.

Do you recognize Exhibit 4?

A. Oh, yeah, I sure do.

Q. Is that your signature or your e-signature on the bottom?

A. I believe it is.

Q. Did you read those schedules before authorizing the Debtor's counsel to sign these?

A. I did.

Q. Are they accurate, to the best of your knowledge?

A. To the best of my knowledge, yes.

Q. If you would, again, we are going to look at the page numbers at the top. Flip to page 8 of 29.

A. Yeah.

Q. This is scheduled -- this is Schedule D, page 8 of 29, on Exhibit 4 is Schedule D of the Debtor's schedules, which lists claims,

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2 parties, that are secured claims.

3 Can you -- the loans that you're
4 talking about that we have been discussing,
5 these -- whether it was a million or whether it
6 was some other number, but the loans referenced
7 in paragraph 7 of the motion, can you tell me
8 which loans on this schedule you're talking
9 about? Which loans would the Mercury have
10 taken out in that time frame?

11 A. I can tell you what -- when we -- do
12 you want me to go down the list?

13 Q. That would be helpful.

14 A. ACE loan was taken out prior to
15 opening and it is a secured loan, and it is
16 secured by some personal assets of mine, as
17 well as some equipment and furniture in the
18 restaurant.

19 Q. This would have been -- the ACE loan
20 is something that was done to build out the
21 restaurant or something like that?

22 A. Yeah.

23 Q. What about the first one on that
24 list, Ist Global Capital?

25 A. That one is not.

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2 Q. That one is not what?

3 A. That one is older. Let me make sure.

4 So ACE loan, and if you go to page 10, NFS
5 Leasing. If you go to page 9, Dau Group
6 Investments, those three debts are prior to
7 opening debts. One is for equipment, FF&D
8 equipment, fixtures. One is for investor. Two
9 for equipment. Furniture FF&D, or one to our
10 investor. The other one would be debts that
11 were connected to this growth.

12 Q. So these, you think, would have
13 been -- the other ones on this list would have
14 been taken out in 2017?

15 A. Everything else would be, yes.

16 Q. In connection with this million
17 dollars or whatever the --

18 A. Connected to the expansion of the
19 restaurant group, yes, or the attempted
20 expansion of the restaurant group. I guess we
21 did expand for some period of time.

22 You get to count it no matter what;
23 right?

24 Q. Can you tell me the loan to figure
25 out what NFS Leasing is, the obligation to Dau

1 CLOUD 5/2/2019

2 Group Investments 234,000 and change, what is
3 that for?

4 A. That is for her -- basically was a
5 venture debt. So she loaned us the money at a
6 preferred rate, and she received stock and we
7 paid her back -- we were paying her back, so...

8 Q. She is not only an investor --

9 A. She's a debtor as well.

10 Q. Well, let me finish the question.

11 So Dau Group Investments is owed
12 money on a secured basis, according to the
13 Debtor's schedules?

14 A. Secured out -- be specific about
15 secured.

16 Q. Well, you list them in Schedule D,
17 which is secured debt. So that indicates to me
18 at least that Debtor believes that Dau Group
19 Investments hold a security interest in some
20 property of the Debtor?

21 A. Yes.

22 Q. And that's \$234,000. Dau Group
23 Investments is also an equity owner of the
24 Debtor; is that correct?

25 A. Yes.

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2 Q. Do you know what their percentage is?

3 A. I believe it's 25 percent.

4 30 percent. 30 percent now. The one on file
5 or the one that is going to be in the future.

6 Q. What is it now?

7 A. Right now it's 20 percent.

8 Q. 20 percent?

9 A. 20 percent.

10 Q. But you're anticipating --

11 A. Once we refile all this stuff, if we
12 need to -- assuming we have success and we
13 continue to operate, she will go from 20 to 30.

14 Q. All the other ones on this Schedule D
15 that we haven't talked about, these are all
16 debts that have been taken out in the 2017 time
17 frame?

18 A. That's right.

19 Q. If you could, in this schedule, flip
20 forward a little bit to page 14 of 29.

21 A. 14 of 29. Okay.

22 Q. And down at the bottom there is a
23 claim listed for Foundation Group,
24 F-U-N-D-A-T-I-O-N, LLC. 91,000. Do you know
25 can you tell me what that is?

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2 A. Cash flow.

3 Q. I beg your pardon?

4 A. Cash flow.

5 Q. What is cash flow?

6 A. Cash to run the business.

7 Q. Now, but I mean, what is Foundation?

8 Was this --

9 A. Foundation is a Fintech company that's
10 an on line lender to businesses. They give
11 business capital to businesses. We took out a
12 loan.

13 Q. Was this one of the loans we are
14 talking about that are referenced --

15 A. I wouldn't describe that -- that was
16 after.

17 Q. This was after?

18 A. I don't -- it is hard for me to --
19 the premise of the question is hard for me to
20 understand because, I guess, maybe the way that
21 my brain works. It just wasn't like that. It
22 wasn't like we need this for this and this for
23 this, and they are separate. It was we think
24 and operate as a team and group. We don't look
25 at it as, well, here is this restaurant and

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2 here is this restaurant. We have restaurants.
3 We have two restaurants or four restaurants.
4 And everyone that is involved runs all of them.

5 So I know that you want to sort of
6 carve this out, if you will, but it just never
7 -- it's not like that. This was never like
8 that, so...

9 Q. Really, what I'm just trying to
10 understand is paragraph 7 of the motion
11 references or alleges very specific facts. It
12 says -- and I will read it again, it says --

13 A. I understand.

14 Q. -- that the Mercury was a successful
15 restaurant cash flowing in the positive, but
16 that it incurred approximately a million
17 dollars in debt in an attempt to rescue a
18 recently opened restaurant in Buckhead.

19 So what I'm trying to figure out --
20 I'm not trying to trick you, believe me.

21 A. It feels like it.

22 Q. No.

23 A. We've been talking about it for 30
24 minutes, like I don't know how to answer you
25 any other way.

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2 Q. All I'm trying to drill down on is,
3 do the -- is this statement accurate? That's
4 all I'm trying to get to.

5 A. Yes.

6 Q. Did the Mercury actually incur a
7 million dollars in debt?

8 A. Which one, the success part or the
9 million dollar part?

10 Q. The second sentence. "The Mercury,
11 however, incurred approximately a million
12 dollars in debt." So all I'm trying to figure
13 out what is comprises that million dollars,
14 when was it incurred?

15 A. I would said that it's all in the
16 information contained in Exhibit 4.

17 Q. And my question specifically to
18 Foundation is, was that one of the loans that
19 the Mercury took out that is referenced in
20 paragraph 7?

21 MS. TZOBARI: Was it a growth loan?

22 You have the --

23 THE WITNESS: I guess I'm struggling
24 to understand the difference in your mind.
25 I'm trying to answer, I really am. Does

1 CLOUD 5/2/2019

2 it matter to you what it's for?

3 BY MR. LEVIN:

4 Q. No.

5 A. Okay. Then I would say I don't -- I
6 don't have a clear answer for you because it
7 was for whatever was needed at the time.
8 Whether it was to pay rent or to pay for food,
9 or to pay for people, or to pay the contractor
10 down the street. It could have been for
11 literally anything. We were -- keep in mind --

12 Q. Let me stop you there. The -- I
13 don't mean to interrupt, but before you go down
14 on a tangent, the paragraph does say -- I'm
15 just going off what is in writing. What it
16 says is that the Debtor, the Debtor,
17 Southeastern Hospitality, LLC incurred a
18 million dollars in debt in an attempt to rescue
19 a recently opened restaurant in Buckhead.

20 A. That is a fair statement.

21 Q. It incurred a million dollars in debt

22 --

23 A. Approximately.

24 Q. -- and all that went to rescue the
25 restaurant in Buckhead?

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2 A. Approximately.

3 Q. When you say "approximately", how
4 wide a range are we talking about?

5 A. Approximately.

6 MS. TZOBARI: Can we go off the
7 record a second?

8 MR. LEVIN: Sure.

9 (Off the record)

10 BY MR. LEVIN:

11 Q. Let me ask a question. It's a
12 different question.

13 The paragraph 7 of the motion, which
14 is Exhibit 2 to this deposition, states that
15 the Mercury incurred debt of some amount,
16 approximately a million dollars in an attempt
17 to rescue a recently opened restaurant in
18 Buckhead.

19 What is the recently restaurant --
20 opened restaurant in Buckhead? What is that a
21 reference to?

22 A. Bar Americano and Bar Crema.

23 Q. And are those both -- are those
24 entities -- were those two entity separate
25 entities or is that --

1 CLOUD 5/2/2019

2 A. It was one -- it was two brands,
3 operated under an LLC called Spaghet LLC.

4 Q. The loans that were taken out at a
5 reference in this paragraph, have those loans
6 -- was any portions of those loans repaid?

7 A. Yes.

8 Q. Do you know how much?

9 A. I don't, off the top of my head. I
10 would say approximately 25 percent.

11 Q. Approximately 25 percent?

12 A. Somewhere in that neighborhood.

13 Q. So the money that the Debtor would
14 have advanced to the recently -- that was money
15 that was advanced to Spaghet?

16 A. Keep in mind, at that time we were
17 paying payroll under one umbrella, so it
18 probably would have gone to payroll. Not
19 necessarily a check written from this to this.

20 It probably would have been used to
21 fortify the cash flow shortfall, to make up
22 payroll differences.

23 Q. Are all these --

24 A. Can I say one thing --

25 Q. Sure.

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2 A. -- just to clarify?

3 So for your own edification, in my
4 mind, the permanent fix loan is imminent. We
5 are about to get \$2 million at 6 percent any
6 day now, in my mind. I had a lot of people
7 telling me that this is no-brainer, that
8 absolutely you're getting this loan. We've got
9 all these people looking at it.

10 In my mind, this garbage stuff that I
11 signed up for, which looks like I'm crazy, all
12 of it was very, very slow, short amortizations.
13 We are talking seven months. So the debt
14 service on these was outrageous. It was blood
15 money.

16 It wasn't that I am illogical and
17 crazy. It was that we have to continue to feed
18 this beast or we lose everything. So what are
19 you going to do? So you go get the blood money
20 loan because I can live with this for 30 days,
21 while I bridge to the next thing. So it was a
22 bridge.

23 What collapsed the whole balloon was
24 when the cash flow shortfall from the new
25 entities did not meet our expectations due to

1 CLOUD 5/2/2019

2 the unforeseen problems that we had with
3 basically the sewage backing up in the
4 restaurant, then all of our good deals, all of
5 our good fundraised deal started to melt away.

6 That's what caused this,
7 fundamentally was, I thought this was very
8 temporary. I thought it was going to be, I can
9 live with this garbage thing for 30 days while
10 we get this worked out. That really was the
11 tone of it, if that makes sense.

12 Q. If you could, at the bottom -- back
13 to Exhibit 2. Not the schedule. On the bottom
14 of page 4 of 30.

15 A. Four of 30.

16 Q. See paragraph 10 there at the bottom?
17 That paragraph --

18 A. Bar date has past?

19 Q. Right. If you flip to the next page.
20 Now we are on page 5 of 30 of Exhibit 2, the
21 last sentence of that paragraph, "Debtor has
22 stabilized operations and is steadily
23 increasing earnings every month."

24 Do you see that sentence?

25 A. I do.

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2 Q. What does that mean, that the Debtor
3 stabilized operations?

4 A. It means that all of the sort of
5 top-heavy management leadership that we had
6 scaled up to absorb had been either --
7 basically my entire management team left after
8 the restaurant went down. Most of them left.
9 Who didn't leave, many of those people had to
10 be let go because of a lot of the problems we
11 had were incompetence based.

12 We had a lot of new people, which was
13 part of the struggle. It's amazing, as I'm
14 sitting here, '17 feels like yesterday, not two
15 years ago. It is all kind of a blur.

16 We have gotten our costs under
17 control. We have gotten our leadership
18 stabilized. We have gotten a consistent
19 efficiency to the system now. We are back to
20 running two restaurants and things are stable.
21 That's what we mean by that.

22 Q. You said people have been laid off.

23 A. Lots of people.

24 Q. Do you know how many?

25 A. Dozens.

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2 Q. I'm sorry?

3 A. Thirty at the restaurant that closed.
4 Another 12 at the other restaurant that closed.
5 Then I would say about four people that were
6 core leadership positions that were -- probably
7 50 people.

8 Q. These 50 people, did any of those
9 work at the Mercury?

10 A. Some of them did. Some of them
11 worked with both.

12 Q. When you say worked with both, what
13 does that mean?

14 A. It means you might have a bartender
15 that would want to work at both restaurants.
16 So he might spend two days over here, two days
17 here, or a manager might cross.

18 Q. Some of the people that were laid off
19 -- I don't want to put words in your mouth --
20 how many of the people that were laid layed off
21 were employees at the Mercury, whether full
22 time or part time?

23 A. At any point?

24 Q. Yeah.

25 A. Probably 10 percent.

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2 Q. 10 percent of the 50 or so that were
3 laid off?

4 A. Yeah.

5 Q. So five?

6 A. Maybe, yeah. If you count like our
7 director of operations who left, she worked for
8 all the restaurants. You know, she started as
9 a GM of the Mercury. And she wasn't laid off
10 and fired. She left.

11 Q. Aside from laying people off, you
12 said you got your cost under control. What
13 does that mean?

14 A. Food cost.

15 Q. And how did you do that?

16 A. We changed the menu to something that
17 was far less expensive. When we opened Mercury
18 we were a a la carte steakhouse, that was sort
19 of a classic American eatery was the idea. And
20 it was a very much steaks and chops style
21 restaurant. It very expensive to run that kind
22 of restaurant. It's typically high 30s, low
23 40s in food costs. But your check average is
24 really high. Bones probably has a 45 percent
25 food cost, but they don't care because they are

1 CLOUD 5/2/2019

2 selling \$150 steaks. So would you rather have
3 80 bucks or 30 percent food cost and 20 bucks?
4 Does that make sense?

5 Q. I understand. The Mercury changed
6 its menu --

7 A. We changed our menu to be more
8 efficient and to lower our costs.

9 Q. Okay. When did that occur?

10 A. That occurred in the middle of first
11 quarter 2017. And has been -- that was the big
12 pivot. Then the second biggest pivot was
13 summer of '18.

14 Q. So the menu changed in both 2017 and
15 then in 2018?

16 A. And about to change now, yeah. We
17 hired a new culinary director about a month
18 ago, and we are about to have a significant
19 difference in everything.

20 Q. The people --

21 A. It's a lot. It's taking place now,
22 but it's not all of it.

23 Q. The people that were laid off that
24 you referenced earlier, when were those people
25 laid off?

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2 A. The biggest layoffs were connected to
3 the closings, the two closings, obviously. The
4 -- what's the right word to use? Sort of the
5 restructuring of the management staff, I would
6 say that happened in summer of '18, late
7 summer, you know, August/September leading up
8 to our filing for bankruptcy.

9 Q. Okay. Aside from laying people off
10 and getting your food cost under control, is
11 there anything else that the Debtor did to
12 stabilize operations?

13 A. Well, I mean, we -- probably the most
14 significant that happened, which I don't know
15 what we would have done to prepare for this,
16 but the moment that it was announced that we
17 were in bankruptcy, we had a massive amount of
18 people calling up and canceling private parties
19 and private events. We had people thinking we
20 were closed. It has been very tough to fight
21 back.

22 I don't know if you're aware of this,
23 but Jamestown, Ponce City Market hasn't
24 provided us any support in social media or
25 e-mail or internally since March of '18. So

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2 they're actively not promoting us, and our
3 tenants are actively being promoted. That is
4 very hard. Because they have a pretty large
5 megaphone.

6 When your landlord isn't helping you
7 at all, and actually working against you, and
8 the entire city thinks you're going out of
9 business, it is pretty tough. When -- you
10 know, it has been very hard to get things back
11 to where they were.

12 It would be great if they could post
13 something once in a while and say, hey, we are
14 still here. I understand how that might not be
15 the easiest choice for them. Still sucks.

16 Q. So what -- again, I'm just focusing
17 on the sentence here in the motion that says,
18 The Debtor has stabilized operations, and you
19 talked about the food cost, people being laid
20 off. You referenced that there was a problem
21 with your people canceling reservations and so
22 forth.

23 Was that part of stabilizing? How
24 does that relate to stabilizing?

25 A. We feel like we've kind of bounced

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2 back from that in the first quarter of '19. We
3 feel like we're back on the rise a little bit.
4 Historically, April is the worst month of the
5 year for us, spring break. If you look at our
6 revenue, every year April is bad. January is
7 typically pretty bad. February is okay because
8 you have Valentine's day. The first, second
9 quarter is not the most sparkling time of the
10 year for most restaurants, or at least not for
11 us. So May is typically good. Summer is
12 solid. Then you get a little bit of wonkiness
13 back to school. Then you hold on to your hat
14 for fall and winter, for holidays.

15 So, you know, basically we've
16 shouldered the worst time of the year, we
17 worked through it. We are now in May. So we
18 don't have a lot of wonkiness moving forward.
19 It doesn't look sparkling the last four or five
20 months, but that is the worst of it. It is
21 over. So now we are kind of on the rise, if
22 that makes sense. We can show you historical
23 data that supports that.

24 Can we take a break?

25 MR. LEVIN: Sure.

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2 (Thereupon, a brief recess was taken.)

3 BY MR. LEVIN:

4 Q. Before the break, Mr. Cloud, we were
5 talking about paragraph 10, the Exhibit 2,
6 which is the motion to assume the lease. We
7 talked about what the Debtor has done to
8 stabilize operations. The second part of that
9 sentence says that the Debtor is steadily
10 increasing earnings every month.

11 What does that mean?

12 A. I would say that means we have made
13 adjustments to the operation to lower our cost
14 and become more efficient.

15 Q. Okay. And when -- how do you measure
16 earnings? What does the phrase "earnings"
17 mean?

18 A. Profit.

19 Q. It doesn't necessarily mean cash
20 flow? It means accounting profit or...

21 A. I mean, yes, I guess would be the
22 answer.

23 Q. And tell me how they are increasing.
24 What is the magnitude of the increase?

25 A. Well, over the course of the last six

1 CLOUD 5/2/2019

2 months we have lowered our back of house, our
3 kitchen, back of house labor cost. We've --
4 you know, every time we've adjusted -- if we
5 adjust the menu in some way, some of the things
6 we do to make them -- make the dishes on the
7 menu require less people to make.

8 You can have a seven-ingredient dish,
9 and it's a lot of prep and a lot of people it
10 takes to do it, or you can have a
11 three-ingredient dish. We tried to make a
12 little bit simpler menu that requires less
13 labor and less prep.

14 Q. But with respect to the earnings that
15 you're talking about in the sentence, do you
16 mean that your profit is going up every month?
17 Is that what you're saying? What do you mean
18 by that?

19 A. It doesn't really work like that. It
20 is really -- we live and die by the seasonality
21 of our business. We live and die by, sort of,
22 arbitrary things like five-week months versus
23 four-week months. We will have an extra
24 payroll. You might look at our P & L, January
25 might look bad because it is a five-week month,

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2 where that doesn't mean January was necessarily
3 bad. But if you look at our financial
4 statement, it would look like January was bad.
5 Does that make sense?

6 Q. I'm just asking questions based on
7 what is contained in the motion. It says, it
8 is steadily increasing earnings. So let me ask
9 it this way: Where would I look to see that
10 the earnings are increasing every month?

11 A. You should look in our P & L.

12 Q. The P & L?

13 A. Yeah. When we are losing, we are
14 losing less. When we are winning, we are
15 winning more. Is that a good way to put it?

16 Q. Continuing on in this -- in
17 Exhibit 2, the next paragraph, paragraph 11, on
18 page 5 of this document it says that the Debtor
19 has the ability to continue to meet ongoing
20 operations and obligations. What do you mean
21 by that?

22 A. We rely on it for our livelihood.

23 Q. When you say that the --

24 A. If we lose the Mercury, no one gets
25 paid. Nobody. That is what we mean.

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2 Q. You state that you're current on your
3 post-petition rent obligations under the
4 Mercury lease, and that the Debtor has the
5 ability to continue to meet ongoing operations.
6 How does it have the ability to continue to
7 meet ongoing operations?

8 A. With the forward cash flow of the
9 business.

10 Q. So the cash flow of the Mercury is
11 sufficient to support whatever debts that the
12 Mercury is incurring?

13 A. Currently it's better every day.

14 Q. Again, where I would look to see
15 that?

16 A. I would assume in the discovery. We
17 submitted financials. They would be in the
18 reports. Like I said, earlier April looks bad,
19 but April is always bad. June -- May and June
20 are historically good, so it's unfortunate the
21 time of the year that that falls doesn't look
22 very good for us, but in actuality, we are
23 about to be in very good shape, if we can
24 continue.

25 Q. You said reports. Are you referring

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2 to the monthly operating reports that the
3 Debtor files --

4 A. I believe --

5 Q. -- in the bankruptcy case?

6 A. We used those as the...

7 Q. Later in this paragraph, the last
8 sentence you state -- the Debtor states, it
9 proposes to cure the outstanding pre-petition
10 arrears owed to Jamestown by remitting a
11 payment of \$40,000 to the landlord no later
12 than May 10th and the remaining prepetition
13 balance in four equal monthly installments.

14 Are you familiar with this plan?

15 A. That was what we proposed. My
16 understanding is that y'all rejected that.

17 Q. But this is what you're proposing to
18 do in the motion? This is what the Debtor
19 proposes to do in the motion?

20 A. I mean, I'm trying to come on the 8th
21 with \$127,000. I'm attempting to raise enough
22 capital to be able to cure the entire amount on
23 the 8th is my goal. Or as close as I can get
24 to it. Because I feel like if we could cure
25 100 percent of the outstanding rent, we would

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2 have the highest likelihood of retaining our
3 business. My goal is to cure it all.

4 It would be great if y'all would work
5 with me. But it doesn't sound like that's
6 interesting.

7 Q. Again, sir, whether or not Jamestown
8 agrees to any of this is kind of irrelevant.
9 I'm just focusing on what is in the motion.

10 A. We believe confidently that we could
11 perform this, yes.

12 Q. That is what I'm getting at.

13 A. Then yes.

14 Q. So this proposal is 40,000 no later
15 than May 10th, and then four equal monthly
16 installments beginning June 10th. To clarify,
17 make sure I understand it because I sometimes
18 get confused by these numbers. You're talking
19 about five total payments; correct?

20 A. Correct.

21 Q. So one, each on May 10, June 10,
22 July 10, August 10 and September 10?

23 A. Correct.

24 Q. How much is the total amount that the
25 Debtor proposes to cure?

1 CLOUD 5/2/2019

2 A. The total amount of the prepetition
3 rent.

4 Q. And what is that number?

5 A. Last I knew was 127,000 plus change
6 and I think the legal fees are up for debate.
7 So I don't know what they will be or I don't
8 know how that will work. We intend to cure
9 100 percent of what we owe.

10 Q. If you turn back to the schedules,
11 which is Exhibit 4, if you turn to page 15 of
12 29.

13 A. Top numbers?

14 Q. Yes, top numbers.

15 A. Uh-huh.

16 Q. There is an amount halfway down
17 listed for Jamestown PCM Master Tenant LP, that
18 is the landlord; correct?

19 A. That is correct.

20 Q. And the number listed is 123,615.81.

21 Do you see that?

22 A. I would assume the discrepancy would
23 be late fees and interest, maybe? I would
24 guess. This has been -- I don't know when this
25 was filed, but it has been a minute.

1 CLOUD 5/2/2019

2 Q. In the absence of -- I see the number
3 of 123 in the schedules, and you mentioned a
4 figure of 127.

5 A. I seem to recall there being a number
6 given to us from you guys. And that number
7 being 127 and change. That is my recollection.

8 Q. Okay.

9 A. That does not include legal fees.

10 Q. Understood.

11 A. I believe that is right. And I know
12 there is, I believe, the lease language says
13 that whoever is the victor, the other side pays
14 legal fees. I guess it depends on how the
15 judge views who won and who lost and how much
16 the fees are supposed to be paid.

17 Q. Sure. Well, put aside the legal fees
18 for just a second. And focus on the --

19 A. The debt. The pre-petitioned rent.

20 Q. Right. If the 127 number is correct.

21 A. Is that the number you have?

22 Q. It's not my deposition.

23 If the 127 number is correct, you
24 propose to pay \$40,000 on May 10, then roughly
25 21,000, just do the math, each of the following

1 CLOUD 5/2/2019

2 months; is that correct?

3 A. Correct.

4 Q. That is in addition to the ongoing
5 current monthly rent payments?

6 A. That is right.

7 Q. Does the Debtor currently have
8 \$40,000 in its bank account to make a payment
9 on May 10th?

10 A. I am in the process of borrowing
11 money from family.

12 Q. The question is, does the Debtor have
13 \$40,000 in its bank account today?

14 A. Today? We have more than \$40,000 in
15 our bank account today. But that doesn't
16 necessarily answer your question.

17 Q. Well, what I'm trying to get at --

18 A. For this, is that your -- do we have
19 40,000 earmarked for this?

20 Q. Correct.

21 A. It's a hard question. I'm having a
22 hard time understanding the question.

23 We can perform what we said. And we
24 will have the money.

25 Q. What I'm really getting at is, come

1 CLOUD 5/2/2019

2 May 10th, if the judge were to approve this
3 motion --

4 A. We could write you a check that day.

5 Q. You could write a check for \$40,000
6 that day?

7 A. Absolutely.

8 Q. And what is the evidence of that?

9 A. I will have it on May 8th. We will
10 have it in escrow or we'll have a letter of
11 intent. It will be in our account or a
12 cashier's check or we'll -- it would be
13 great -- if there any audience for -- you know,
14 and I overwhelmingly hope there could be, to
15 work something out where we don't have to
16 fight, you know, we can provide whatever is
17 required to satisfy any, you know, concern that
18 we couldn't.

19 Obviously, if we were not able to
20 provide that assurance, then we would go away.
21 But we can and we will.

22 Q. The purpose of this deposition, sir,
23 is just to figure out what evidence the Debtor
24 has for this entire process. This entire
25 motion is going to be heard by the court. All

1 CLOUD 5/2/2019

2 I'm trying to figure out is --

3 A. I think I know.

4 Q. -- what do I look at -- what do I
5 look at if I'm an attorney talking to a judge
6 and saying, Debtor proposes to pay me \$40,000
7 on May 10th? How do I know the Debtor has
8 \$40,000 to pay me on May 10? That's what I'm
9 trying to get at. So do I look at the bank
10 account?

11 A. Cashier's check. I mean, a letter of
12 intent. What would you like to have? Tell me
13 what you want and I will get it here.

14 Q. It's just a question, sir.

15 A. Whatever is required, we will meet
16 the demand.

17 Q. If I looked at the -- if you produced
18 the bank records for today, for example, you
19 say you have more than 40,000 cash in your bank
20 account?

21 A. Payroll comes out like at some point
22 today, so the day before, we have a lot of
23 money in the account; the day after payroll we
24 have less money in the account.

25 Q. And how often does your payroll come?

1 CLOUD 5/2/2019

2 A. Weekly.

3 Q. Weekly. So payroll is due May 2nd?

4 A. Payroll --

5 Q. Today is May 2nd.

6 A. -- runs on Tuesday. It's Tuesday for
7 Wednesday. So next week it will run Tuesday
8 for Wednesday, yeah. So the 8th. So it will
9 have already run on the 8th.

10 Q. So the money -- the way your payroll
11 works, do you use a payroll service?

12 A. We do Paycor.

13 Q. So Paycor takes the money necessary
14 to pay the payroll out of the bank account on
15 Tuesday -- every Tuesday?

16 A. Actually every Monday.

17 Q. Every Monday?

18 A. Yes.

19 Q. And then they ACH --

20 A. Process.

21 Q. -- or process the account and payroll
22 goes out on Wednesday?

23 A. Correct.

24 Q. So on Wednesday, May 8th, what would
25 be the bank account balance, do you know?

1 CLOUD 5/2/2019

2 A. It should be fairly healthy.

3 Obviously, it depends on how things go between
4 now and the 8th, which I can't predict the
5 future. Typically we have a really strong May.
6 Historically we have a strong May, so we are
7 hopeful that May is going to be good.

8 We also generated a cashier's check
9 for the May 1 rent about three days earlier
10 than the 1st. So that money was pulled out of
11 the account early. So, you know, we've kind of
12 intentionally gotten a little bit more cash
13 flow because of that.

14 My hope is that if I'm, depending on
15 how much money I can raise between now and the
16 8th, the business could be in a position to
17 help that. Depending on how much we do in the
18 next eight days, if that makes sense.

19 MR. LEVIN: You okay?

20 (off the record)

21 THE WITNESS: I'm trying to raise
22 capital, so that I can pay my debts. That
23 is what I'm trying to do, and keep my
24 business alive.
25

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BY MR. LEVIN:

Q. The subsequent payments of 21,000 over each of the next five months, if the number 127 is correct, does the Debtor project to earn excess cash, \$21,000 to pay that debt?

A. Yeah. That should be reasonable.

Q. Now, sir, you mentioned a couple times, but just to clarify, you're aware in conjunction with this matter the Debtor served responses to various discovery requests that Jamestown posed?

A. Try to, yes.

Q. Are you familiar with that?

A. Made every reasonable attempt. I'm not sure how good of a job we did but we tried.

MR. LEVIN: Mark this as Exhibit 5.

(Thereupon, Exhibit 5 was marked for identification.)

(Thereupon, Exhibit 6 was marked for identification.)

THE WITNESS: We don't have a team of people. We just have us.

Do you need a sticker?

1 CLOUD 5/2/2019

2 BY MR. LEVIN:

3 Q. I've handed you Exhibits 5 and 6.
4 Five is the Southeastern Hospitality, LLC
5 Response to First Interrogatories from
6 Jamestown PCM Master Tenant.

7 Six is the Southeastern Hospitality's
8 Response to First Request for Production of
9 Documents.

10 Are you familiar with these
11 documents, sir?

12 A. Somewhat, yes.

13 Q. Have you seen them before?

14 A. Yes.

15 Q. If you look at Exhibit 5, which is
16 the interrogatory responses, turn to the very
17 last page. Is that your signature on that?

18 A. It is.

19 Q. And did you read these interrogatory
20 responses before you signed this verification?

21 A. I did.

22 Q. Did you provide all of the
23 information contained in these responses?

24 A. Myself and my controller did.

25 Q. And your controller is?

1 CLOUD 5/2/2019

2 A. Drew Smith.

3 Q. What about Exhibit 6, did you read
4 that one before --

5 A. Yes.

6 Q. -- it was served?

7 This is the document request. Did
8 you provide the documents the Debtor agreed to
9 provide in this?

10 A. Myself or Drew did, yes.

11 Q. If you turn back to Exhibit 5, sir,
12 and flip to page 3, and now looking at the
13 bottom page numbers. The interrogatory number
14 2 asks, What is the source of funds for the
15 Debtor's proposed cure payment to landlord,
16 including the \$40,000 lump sum payment for four
17 monthly installments? And then B, the Debtor's
18 prospective rent and other obligations under
19 the lease.

20 It says, "Debtor has secured a loan
21 for \$100,000 and, B, revenue from operations."

22 Do you see that response, sir?

23 A. Yes.

24 Q. Is that answer true and correct to
25 the best of your knowledge?

1 CLOUD 5/2/2019

2 A. We have a verbal agreement. And I'm
3 trying to raise more. It is influx. It is
4 going to be -- my goal is that it's no less
5 than that. My goal is that it's more, so that
6 we can not only secure the rent, but also have
7 left some over for cash flow.

8 Q. Is there any other sources of funds
9 other than the loan --

10 A. Business.

11 Q. -- the loan for \$100,000 and the
12 revenues from the operations of the business?

13 A. Not currently.

14 Q. When you say revenue from operations,
15 does that mean just the revenue from the
16 Debtor's operations or are you including any
17 other entity in that?

18 A. That money would be available to put
19 towards this, if need be. I don't think I will
20 need to.

21 Q. When you say "that money", what are
22 you referring to?

23 A. Any monies outside of the business.
24 I think the loan -- the loan that we have to
25 cure the prepetition rent should give us enough

1 CLOUD 5/2/2019

2 sort of stability to be able to get through
3 this. That is what our forecast show.

4 Q. Now, with regard to the \$100,000 loan
5 referenced in the -- referenced in the
6 interrogatory response, tell me the terms of
7 this loan, please.

8 A. They're in negotiation right now.

9 Q. Who's the lender?

10 A. My family.

11 Q. Any specific person or just --

12 A. I don't want to get into that. I
13 don't think that is germane now, until I get a
14 signed deal, then you will know. I'm not
15 withholding it, but I don't want to tell you
16 something and then have it change, and be like,
17 well, where did that person go? Like I'm
18 talking to my uncle and my brother. It can be
19 one of them or it can be both of them. It
20 could be, you know, so...

21 Q. You don't -- sitting here today,
22 there is no, quote, lender for this loan?

23 A. They promised to help and they are --
24 they are -- they and I are working it out.

25 Q. Who would be the borrower in this

1 CLOUD 5/2/2019

2 loan?

3 A. It'd probably be me personally.

4 Q. You personally?

5 A. I would be the lender to the entity.

6 Q. That's what I am trying to get at.

7 A. I would be the lender.

8 Q. You would --

9 A. To the Debtor.

10 Q. The current plan, then, is that you
11 would borrow money from family members?

12 A. Correct.

13 Q. Then you would loan money to the
14 Debtor?

15 A. Yes.

16 Q. And you would expect that money to be
17 paid back?

18 A. Not until we are stable enough to do
19 it.

20 Q. What is the proposed interest rate on
21 the loan from you to the company?

22 A. I haven't gotten to that point yet,
23 to be honest with you.

24 Q. Has the loan been funded?

25 A. It's in negotiation as we speak.

1 CLOUD 5/2/2019

2 Q. Has the loan been funded?

3 A. No. There is no need for it to be
4 funded.

5 Q. Has the loan been documented?

6 A. No.

7 Q. Would the loan be secured or
8 unsecured?

9 A. It will be secured with my assets, of
10 which I have other assets. Look at it like
11 this, we have three corporations that are
12 relevant to the restaurant world. Southeastern
13 is one. Paladin, which is Pinewood, is the
14 other. Then we have Proof, which is a product
15 we sell in retail stores.

16 I run a consultancy in a software
17 company also. I can -- I receive income from
18 those entities. If this whole thing went down
19 a rabbit hole, I would have some income from
20 other places and I could, you know, manage my
21 debts.

22 Does that answer your question?

23 Q. Well, what I'm trying to get at is,
24 the Debtor has indicated in its interrogatory
25 responses that it has secured a loan for

1 CLOUD 5/2/2019

2 \$100,000. And --

3 A. It's a verbal.

4 Q. I'm trying to get the details of what
5 that loan is.

6 A. It hasn't been worked out yet.

7 Q. It hasn't been worked out yet.

8 A. You're aware that I filed Chapter 7
9 personally?

10 Q. I am aware.

11 So the loan -- and, again, I just
12 want to be clear on the -- as clear as we can
13 be on the terms, since we don't know how much
14 about it. The loan would be from you to the
15 Debtor?

16 A. Correct.

17 Q. And would you insist that that loan
18 to the Debtor be secured or unsecured?

19 A. I don't think -- I haven't gotten
20 that far. My goal is to keep my business alive
21 and keep my -- my, you know -- continue to
22 operate the Mercury, which is our largest and
23 most successful restaurant. It is also the
24 primary -- the primary source of income for my
25 personally.

1 CLOUD 5/2/2019

2 Q. Sitting here today, you can't tell me
3 whether that loan would be secured or
4 unsecured?

5 A. Not because I'm being difficult but
6 because we haven't figured it out yet.

7 Q. Understood.

8 Do you know what --

9 A. My deadline is the 8th. I didn't --
10 when we filled this out, I didn't know we were
11 going to have a deposition. I have been
12 operating under that deadline schedule.

13 Q. For what purposes would the loan
14 proceeds be available to be spent?

15 A. Whatever amount needs to be required
16 to satisfy prepetition rent. And if there is
17 any left over, that would go to cash flow.

18 If we could work out a deal, let's
19 say, some sort of workout, whatever they might
20 look like, then, you know, we would be -- if we
21 have to -- if I have \$127,000 and I can write a
22 check on May 8th, and I do that, and that saves
23 the company, then everything else flows off
24 that.

25 If Jamestown is willing to negotiate

1 CLOUD 5/2/2019

2 some more favorable terms than that, then that
3 just makes the company easier to run. You see
4 what I'm saying?

5 Q. Uh-huh.

6 A. So it's to my benefit to structure
7 something rather than pay 100 percent of it on
8 the 8th. But if it's lose it or pay
9 100 percent, I'm going to try to pay
10 100 percent.

11 So I'm trying to figure out as much
12 capital as I can raise to save the business is
13 what I'm going to show up on the 8th.

14 I have a verbal agreement that it
15 will be no less than \$100,000. But that is not
16 in paper yet.

17 Q. That's fine.

18 You mentioned earlier in your
19 testimony something about a 2 million-dollar
20 loan. What is the 2 million-dollar loan? Is
21 that related to this?

22 A. That was the loan that we were trying
23 to have that was going to basically cover all
24 of our financial reorganization.

25 Q. Would that be a loan -- is that also

1 CLOUD 5/2/2019

2 from your family members?

3 A. No. That was a loan -- that's why
4 Acuity was involved. That is why we were
5 trying to get all this done. That was
6 basically to refinance all our debt.

7 Q. Okay. I must have misunderstood.

8 A. Corporate wide.

9 Q. I thought you testified, and correct
10 me if I'm wrong, but I thought that you
11 testified you were days away from securing the
12 \$2 million loan. Is that not accurate?

13 A. Back in '17.

14 Q. Okay, I misunderstood.

15 A. When we were taking down these
16 garbage loans, it was -- in an effort to bridge
17 the gap between this permanent solution, that
18 we were working on with Acuity and all these
19 different fundraisers. And we had people that,
20 you know, had highly recommended, highly
21 credible people that raised capital for
22 businesses. Our package was on their desk, and
23 they were giving me every assurance that 12
24 groups were looking at it, and three are very
25 interested. And we're imminently looking for

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2 an offer sheet. We were days away, weeks away
3 from an offer sheet.

4 In one case I had a guy -- one of the
5 guys tell me, who I would say he's sort of
6 angel investing level, connects with those
7 types. And he is like, I'm going to get this
8 money in 60 days. Now, obviously I wanted to
9 hear that, you know, he gave me pretty
10 confident assurances that that was to going
11 happen.

12 So when I took down some of these,
13 you know, poor, like obviously bad decisions,
14 financial decisions, my view was that I've got
15 to make two bad payments and then I'm going to
16 clean this up. That's what was going on in my
17 mind.

18 Q. So the \$2 million loan that you
19 testified to earlier or 1.7, whatever the
20 number was, that was in the time frame of 2017?

21 A. Right. That was to refinance the new
22 project. That was to -- keep in mind, Dau from
23 Mercury, she had a balloon in 24 months, so we
24 had a balloon on the horizon. At the end of
25 that year, we had to pay her a balloon. So

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2 I -- you know, this was going to clean up all
3 that stuff and put in a seven-year or 10-year
4 note. And it was going to be -- life was going
5 to be great.

6 Q. And that's all off the table now?

7 A. Oh, yeah.

8 Q. Okay. So -- and this has been -- I'm
9 glad I asked these questions, because I can get
10 clarification. So the only loan that's
11 currently on the horizon today is the potential
12 \$100,000 loan from your family members to you,
13 which you would then, in turn, advance to the
14 Debtor?

15 A. Well, let me -- so that is true, yes.
16 Let me answer that part. And secondarily,
17 until we get out of bankruptcy, I'm, you know,
18 kryptonite. No one will touch this. But I've
19 got about a dozen lenders that we could
20 theoretically go to that have said, the moment
21 you get out of reorganization, then we can talk
22 about all kinds of things.

23 We have enough -- keep in mind, we're
24 a \$3 million company on a bad day. And we're a
25 million-dollar company in Pinewood. And we're

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2 about 250,000 on Proof. So it's not like we
3 don't have enough revenue to be able to go
4 raise capital and fortify or -- or, you know,
5 reinvest in the company. But I can't do any of
6 that until this gets resolved. Until we are
7 out of bankruptcy, I have very limited options
8 to raise capital.

9 And so it's a chicken or the egg
10 problem. I can't go -- if I was out of
11 bankruptcy right now, I would have no problem
12 raising capital to write you a check for 127 or
13 whatever, but until I get out of bankruptcy, I
14 can't do that.

15 So that's why my options are just
16 pretty much friends and family at this moment.
17 But I would be looking to -- you know, we're
18 going to have some kind of workout with our
19 debtors, the other people. Something is going
20 to get worked out with them. I don't know what
21 or when. But we're going to need to pay those
22 people whatever the judge decides we need to
23 pay them with our plan.

24 So there's -- I have a high level of
25 confidence that we're going to be able to get

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2 our, whatever remaining debts we have,
3 restructured in some way pretty quickly. And
4 that's one of my goals.

5 Q. Back to Exhibit 5. The next
6 interrogatory is Interrogatory Number 3. And
7 this, again, is on page 3. It says that the --
8 the question was in the interrogatory, "Can the
9 Debtor provide any evidence of its ability to
10 provide adequate assurance of prompt cure for
11 pre-case arrearages and other amounts owing
12 under the lease and/or B, future performance
13 under the leases?"

14 It says, "The Debtor will produce a
15 pro forma," which you did produce. And the
16 Debtor --

17 A. Which we replaced. I don't know if
18 you saw that yet.

19 Q. Pardon?

20 A. We just replaced that last week. I
21 don't know if we sent that to them.

22 Q. You can identify it in a second here.

23 But the -- it says, "Debtor will
24 produce pro forma and the Debtor responds
25 further by way of Federal Rules of Procedure

1 CLOUD 5/2/2019

2 33(d)." Do you know what that means, Federal
3 Rules of Procedure 33(d)?

4 A. No.

5 Q. Okay. Aside from the pro forma, are
6 you aware of any other documents that would
7 evidence the Debtor's ability to cure the
8 arrearage or provide future performance under
9 the lease?

10 A. Am I aware of any -- can you restate
11 it? I'm sorry.

12 Q. Sure. So the interrogatory response
13 says that the Debtor will produce a pro forma.
14 And then it says that there are other documents
15 potentially that would be responsive to this.
16 It doesn't identify what those documents are.
17 So my -- my question to you is, aside from the
18 pro forma that was produced, are you aware of
19 any other documents that would evidence the
20 Debtor's ability to perform under this lease
21 going forward?

22 A. Let me take a second here. If I'm
23 not mistaken, what was provided at this stage
24 was a, whatever has been -- occurred to 2019
25 and the remainder of 2019, I think is what we

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2 provided.

3 Q. Uh-huh.

4 A. We have since expanded that to give
5 you more history and more future. So we're
6 trying to give you more of a time frame so you
7 can see more historical, but it's been -- keep
8 in mind, I'm one person that's trying to do all
9 this as fast as I can. So, you know, we've
10 gotten -- we've got more information to provide
11 of that, I guess is what I would say.

12 Q. But you haven't provided it yet?

13 A. We're -- I don't know how to answer
14 that question.

15 How would you answer that question?

16 MS. TZOBERI: It's not my deposition.

17 BY MR. LEVIN:

18 Q. It's your deposition, sir.

19 A. We are -- we are trying to get you
20 the information as fast as possible. I don't
21 know what FRCP 33(d) means.

22 MR. LEVIN: That's fine.

23 Can you mark this as Exhibit 7,
24 please.

25 (Thereupon, Exhibit 7 was marked for

1 CLOUD 5/2/2019

2 identification.)

3 BY MR. LEVIN:

4 Q. Mr. Cloud, I'm handing you what has
5 been marked as Exhibit 7. This is a printout
6 of an e-mail from William Rountree to
7 Ms. Tzoberi and to myself. And it's forwarding
8 a message that you were copied on, I believe,
9 or was sent to you from Drew Smith to Brooks
10 Cloud and -- and William Rountree.

11 Do you see -- have you seen this
12 e-mail before?

13 A. Yes.

14 Q. Maybe not the top part, but where the
15 forwarded message begins?

16 A. Yeah.

17 Q. And again, you said Drew Smith is
18 your controller; is that correct?

19 A. Yes. He does all our -- our
20 bookkeeping and financial stuff.

21 Q. And was he tasked with providing
22 additional information with respect to these
23 discovery requests?

24 A. He was tasked with sort of the grunt
25 work part of it and not the -- not sort of the

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2 financial forecast part of it.

3 Q. If you look down at that message,
4 there's a -- right under the header from Drew
5 Smith to Brooks Cloud, it says, "Question 1,"
6 and then it references Interrogatory Number 3
7 that we've been talking about.

8 A. Page 1?

9 Q. Yes, I'm sorry. The first page, yes.
10 Correct. And it says, again, this is going
11 back to Interrogatory Number 3. "Please
12 provide evidence that the Debtor can provide a
13 prompt cure and future performance under the
14 lease" is all what we've been talking about.
15 The response says, "The Mercury cash flow
16 projection, any information provided by Brooks
17 for upcoming loans."

18 Do you see that?

19 A. Question 3?

20 Q. No. If you -- back to the first
21 page, first page. It says question -- right
22 under the header, Question 1 is actually a
23 reference to Interrogatory Number 3.

24 A. The cash flow projection which you
25 have provided there, it's '19, 2019; right?

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2 Q. Correct.

3 A. Any information provided by Brooks
4 for upcoming loans.

5 Q. This is essentially a supplemental
6 answer to this Interrogatory Number 3. And so
7 my question to you is, are you aware of any
8 other -- aside from what we've already
9 discussed, this expanded cash projection, which
10 we have not seen yet --

11 A. Personal loans and business -- and
12 business revenue.

13 Q. Now, the response also mentions
14 information provided by Brooks for upcoming
15 loans, plural. We've talked about the \$100,000
16 loan. Is there any other loan out there?

17 A. We have about 20 different potential
18 lenders that I'm talking to simultaneously.
19 You know, I talked to one of them this morning
20 on the way here. I mean, I'm doing literally
21 everything I can to raise enough money to be
22 able to, if need be, satisfy 100 percent of the
23 prepetition rent on the 8th. So I don't care
24 where I get it from to some degree, as long as
25 it's a reasonable structure and I can get it

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2 between now and the 8th. I want to show up
3 with some money. That's my goal.

4 Q. And these loans -- again, not trying
5 to be snippy here, but none of these loans have
6 been documented or agreed to or anything;
7 correct?

8 A. Not as of yet.

9 Q. And would the Debtor be the borrower
10 under these other loans or again, would this be
11 you?

12 A. I think it would depend on which one
13 we're talking about. I think the family
14 financing would be lent to me. I think if it
15 was any other type, it would be lent to the
16 business. And it would have to go through a
17 approval process. So we've got to sort that
18 out. But I don't have -- it's not done yet.

19 MS. TZOBERI: So can we go off the
20 record?

21 (Off the record)

22 THE WITNESS: Do you want me to
23 explain that at all?

24 MR. LEVIN: No, it's not necessary.
25 I think we're going to get to it in just a

1 CLOUD 5/2/2019

2 second.

3 Mark this as Exhibit 8, please.

4 (Thereupon, Exhibit 8 was marked for
5 identification.)

6 BY MR. LEVIN:

7 Q. Mr. Cloud, I've handed you what we've
8 marked as Exhibit 8 for this deposition. And
9 this appears to be a pro forma from
10 January 2019.

11 And if you flip to the next page,
12 December 2019. Are you familiar with this
13 document?

14 A. I am.

15 Q. And I'll represent that this is a
16 document that was sent to me by your counsel in
17 connection with the Debtor's responses to our
18 discovery requests.

19 And is this the pro forma that's
20 referenced in response to Interrogatory Number
21 3?

22 A. Yes.

23 Q. And also, later in this e-mail that
24 we talked about --

25 A. Yes.

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2 Q. -- Exhibit 7? Is there any other --
3 well, strike that.

4 Did you review Exhibit 8 before it
5 was produced?

6 A. I did.

7 Q. Do you understand the numbers
8 contained therein?

9 A. I do.

10 Q. How were those numbers derived?

11 A. They were -- I was trying to find a
12 -- what is the right word? We use QuickBooks
13 for our financials. There's a lot of, you
14 know, sort of add-ons, third-party apps that do
15 various cash flow projections. I thought it
16 might be a better strategy to use one of those
17 cash flow projection tools. And I don't think
18 it was a good idea, because it ended up
19 producing something that was not as accurate as
20 I wanted it to be. And it kind of got sent
21 before I was approving it, so Drew thought he
22 was supposed to send it and he wasn't. And it
23 got sent and it got sent to you. So that was a
24 mistake that we made.

25 But the -- the reason why this was

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2 the way it is is because we were using this new
3 tool that we really hadn't used before. And it
4 was a mistake. But long story short, this is
5 not accurate and we need to replace it.

6 Q. Okay. And I understand what you're
7 saying about it not being accurate. But just
8 in general, the numbers that are contained
9 here, are these based -- you said it was based
10 --

11 A. All this flew out, was borne from our
12 QuickBooks, so it's not inaccurate completely,
13 but it's not accurate as far as the forecast.

14 Q. All right. So why don't you tell me
15 what's not accurate about it.

16 A. That this is not contained only -- so
17 we still run payroll as one payroll. Like, so
18 everybody gets paid at the same time, which
19 means that we use the Mercury's bank account to
20 run payroll. So this total cash in, 512,
21 that's not Mercury money. I didn't want you
22 guys to get confused about that, because it
23 doesn't reflect the reality. Even though the
24 money will sit there for a second and then go
25 out, it's just -- the way our payroll works, we

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2 run it out of one bank account and it happens
3 to be the Mercury bank account.

4 But I thought -- I was concerned that
5 this would give sort of a confusing picture of
6 how much money is Mercury money. So I wanted
7 to kind of firewall that and give you
8 information that's specifically germane to
9 Mercury. And that's what I've -- I've redone
10 this and I want to replace that.

11 Q. And the 512 -- just looking at the
12 first column, January 2019. So the total cash
13 in of 512,226.73, if I understand your
14 testimony correctly, what you're saying is that
15 not all that cash is cash generated by the
16 Mercury?

17 A. That's right.

18 Q. And correspondingly, the total cash
19 out of 550, not all of that cash is going to
20 pay employees of the Mercury?

21 A. That's right.

22 Q. Or expenses of the Mercury?

23 A. That's correct.

24 Q. So the -- and I see that there's a
25 couple of rows where it says "Intercompany Deep

1 CLOUD 5/2/2019

2 End, intercompany Pinewood." Are these -- what
3 is that?

4 A. That would be the cure for payroll.
5 So like, you know, if Deep End had a payroll of
6 \$7500, then Deep End would have to pay the
7 Mercury \$7500 to make payroll or whatever its
8 share of the payroll was. For example, if
9 we -- if Mercury buys three cases of whiskey,
10 one of those might get sent to Pinewood because
11 we get a better deal if we buy three cases of
12 whiskey.

13 So we have a lot of intercompany
14 things that are logically a good idea.
15 Economies of scale-type things or payroll-type
16 things. It's to our benefit as a company to
17 run payroll out of one account. It's pretty
18 cumbersome for us to do it out of a separate
19 account because of a lot of reasons. Like we
20 don't run the 10 Apart Hospitality entity for
21 that purpose any longer. It just didn't work
22 very well, so we went back to the old way.

23 But anyway, I didn't want there to be
24 confusion about these numbers, because these
25 obviously are not the numbers we're doing in

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2 revenue for Mercury. I mean, you can probably
3 see historically what we've reported for
4 revenue and it's half of that in January.

5 Q. So the total cash in is, if I
6 understand it correctly, is inflated to a
7 certain degree by amounts that you're receiving
8 from other --

9 A. Three other entities.

10 Q. Three other entities. And then the
11 total cash out is similarly inflated by the --

12 A. Correct.

13 Q. -- amounts that would be attributable
14 to those entities?

15 A. That is right.

16 Q. But the bottom line number, is that
17 accurate or is that inaccurate as well? The
18 closing balance number and the profit and loss
19 numbers?

20 A. To be completely honest with you, I
21 don't think that we know how to use this
22 software very well. It's a third-party app
23 that we tacked on and I -- and it just got away
24 from me before I got a good chance to look at
25 it. It should have never -- and you should

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2 have never seen it. So no, it's not accurate.

3 Q. The -- if you turn to page 2 of this
4 document. And over on the right-hand side, it
5 says, "8 percent increase over 2018 sales."

6 Do you see that?

7 A. Yes.

8 Q. What is -- is that -- well, tell me
9 what that is. Tell me what that means.

10 A. That was a conversation Drew and I
11 had about what we thought the impact of the
12 Kroger building, the Kroger development was
13 going to have. And there's two major
14 developments that are within a stone's throw of
15 Ponce City Market. We feel that that's going
16 to be an increase in revenue. The one is an
17 old Masquerade, which is across the street and
18 one is the -- I don't know if it's actually
19 referred to as the murder Kroger space. That's
20 because two people were murdered.

21 Q. In Atlanta, I think.

22 A. Everybody knows what that is if
23 you're from Atlanta. Anyway, there's a brand
24 new building. I think it's a 12 or 15-story
25 building that's about to open up. It's going

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2 to have a thousand people working in it. And
3 they're going to be eating somewhere and we
4 think that's going to be a good thing for us.

5 So we do things -- we're going to --
6 I don't know when exactly they open, but it's
7 going to be this calendar year. And so we
8 think there's going to be an increase in
9 revenue because of that.

10 Q. Okay. Was this -- let me ask you
11 this question. Is the line item net sales, is
12 that changed in the new pro forma or is that
13 accurate?

14 A. Everything in this has changed. This
15 is not accurate.

16 Q. Okay. Are you assuming in the new
17 pro forma that there'd be an 8 percent increase
18 in sales?

19 A. We are. From the date -- from
20 May 1st on. Not -- you have real numbers for
21 up to the end of April.

22 Q. January to April, but nothing from --

23 A. I think you're missing -- what she's
24 shown right here is missing a week, because it
25 hadn't happened yet.

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2 Q. And is that 8 percent increase going
3 to be also applied to the new pro forma?

4 A. Yes.

5 Q. And if I understand your testimony
6 correctly, it's 8 percent increase of sales.
7 That's what you're projecting from May 1 on?

8 A. Yeah. There's a lot of reasons why
9 we project that 8 percent, but yeah.

10 Q. Okay. Well, tell me the other
11 reasons.

12 A. That we'd gone from running two --
13 from four and a half restaurants to two, which
14 means we're focused -- more accurately focused
15 on things.

16 We've basically cleaned out all the
17 sort of fat from our operation. We've got a
18 much more efficient way to operate now. The
19 distraction of this chaos will be hopefully
20 lessened once we resolve this. There's, you
21 know, dozens of reasons why we should be better
22 at focusing our energy on what to do instead of
23 being distracted by chaos, having a bloated
24 organization that wasn't performing very well.
25 I was distracted while we were dealing with all

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2 these fires. And, you know, the neighborhood
3 is, you know, pretty significantly different
4 today than it was in 2016. You know, it's been
5 gentrified quite significantly. And, you know,
6 we've had a significant uptick in our private
7 dining and private event sales since hiring a
8 full-time person to do nothing but that for
9 Mercury. And she's done a great job and she's
10 got a book of business now. You know, like we
11 do a lot of stuff with Mailchimp, we do a lot
12 of stuff with E&Y, we do a lot of stuff with
13 companies that have an ongoing concern for
14 parties and events. And that was not nearly as
15 focused as it should have been in '17 and most
16 of '18.

17 So for all those reasons, we feel
18 very confident that 8 percent is a conservative
19 estimate of what we think we're going to do.

20 We already have bookings for a lot of
21 that. You know, we book up -- you know, in
22 some cases, we can book up six months in
23 advance for a private event or private party.
24 We've seen a lot of business from the film
25 industry recently. People want to film in our

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2 restaurant all the time.

3 Q. And you get revenue from that?

4 A. Sometimes. We have to get that
5 approved by Jamestown. But sometimes, we do,
6 like the Walking Dead cast loves our
7 restaurant. They come in all the time, for
8 whatever that's worth. Zombie killers. We
9 feed the zombie killers.

10 Q. If you could turn back to page 1 of
11 Exhibit 8. And about four lines down, it says,
12 "Other long-term liabilities" and it says
13 "\$75,000." This is in January 2019.

14 A. That was a mistake that Drew did not
15 know how to book. Teresa basically bought more
16 stock in the company.

17 Q. Teresa is?

18 A. Teresa Dau, part of Dau Investment.
19 He didn't know how to book that.

20 Q. So what was that exactly?

21 A. A stock purchase.

22 Q. Was it a stock purchase from the
23 company?

24 A. We don't know how to book it right,
25 because we're not accountants. We lost our --

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2 we're trying to figure out how to book it
3 right.

4 Q. \$75,000 came into the -- came into
5 the --

6 A. To purchase stock.

7 Q. To purchase stock from the Debtor or
8 to purchase stock from one of the other
9 members?

10 A. Well, Teresa's entity, which is Dau
11 Investments, gave the entities -- she bought
12 stock in all of the entities, increased her
13 shareholder stake in Mercury and increased her
14 shareholder stake in other entities. And the
15 cost of that was \$75,000.

16 I didn't know how to book it right,
17 and so we haven't gotten to that point yet of
18 booking it correctly.

19 Q. I think I might understand. So
20 the -- when we talked much earlier in the
21 deposition about your share being diluted, is
22 this what you're talking about?

23 A. Yes. Once this is -- once it's
24 papered up correctly, that's what will happen.
25 That's why. I sold some of the company.

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2 Q. Well, that's what I'm trying to get
3 at. Is this a debt that is owed?

4 A. No. No. She purchased the stock.

5 Q. She purchased the stock. But did she
6 purchase --

7 A. It's hard to --

8 Q. Let me take a step back. The Deep
9 End -- or excuse me, the Southeastern
10 Hospitality, LLC is an LLC; correct?

11 A. That's correct.

12 Q. Doesn't have stock. It has
13 membership interest?

14 A. Correct.

15 Q. Ms. Dau purchased membership interest
16 in Southeastern Hospitality?

17 A. Partly, yes.

18 Q. Partly. Partly in some of the other
19 entities?

20 A. Pinewood. Yes.

21 Q. Was the \$75,000 the total or is this
22 just the amount that's attributable to
23 Southeastern?

24 A. It's the total.

25 Q. And that \$75,000 came in and you're

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2 not sure how to book it?

3 A. Yet.

4 Q. Yet. But this does not represent a
5 debt of the Debtor's?

6 A. That's correct.

7 Q. It represents some sort of equity
8 purchase directly from the Debtors?

9 A. Correct.

10 Q. And this was not \$75,000 paid to you
11 to purchase your membership interest?

12 A. Correct. I was the only one that was
13 diluted. But I didn't get the money we used.

14 I was going to say something about
15 that, but I can't remember what I was going to
16 say now.

17 Q. We talked a little bit about -- or
18 you mentioned several times the Deep End. What
19 is the Deep End?

20 A. That's what I was going to say.
21 Thanks for the reminder.

22 One of the -- you said why do you
23 think you're going to be able to increase --
24 and why do you have an optimistic view.

25 One of the things is that we also

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2 closed the Deep End, which was a restaurant
3 that we started in 2017. That was a failed
4 experiment. It lasted much longer, but we
5 ended up making the decision to close it. And
6 not -- not zero percent because we wanted to
7 focus our energies on the businesses that were
8 more successful and had more upside. And so I
9 guess it was April 15th we closed the Deep End,
10 which was another distraction.

11 Q. And how is that -- how is the Deep
12 End related to this Debtor?

13 A. Which Debtor?

14 Q. The Southeastern Hospitality.

15 A. Has the same management.

16 Q. Same management. Is this -- this was
17 a separate LLC?

18 A. Yes.

19 Q. Was it called Deep End LLC?

20 A. It was.

21 Q. And did you own a membership interest
22 in that?

23 A. I did.

24 Q. And were you the only owner or were
25 there other owners?

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2 A. Julian and Mike also owned a
3 percentage.

4 Q. And was Dau Investments also involved
5 in this?

6 A. She owned 10 percent.

7 Q. And what is its status now?

8 A. It's in Chapter-something, 11? Where
9 is it? In 11 or -- it's in 11, I think. I
10 think it's -- I don't know. I don't know what
11 the status of that is at this very juncture.

12 Q. Deep End LLC filed for bankruptcy?

13 A. It did. And I think we're going to
14 get it -- I think we don't have to finish it,
15 because it's not -- I can't remember what the
16 term -- there's a -- I don't think we're going
17 to have to continue to go through bankruptcy.
18 I think they're going to dis -- not discharge
19 it, but --

20 Q. Dismiss it?

21 A. Dismiss it, yes. I'm sorry. There's
22 no need to continue through bankruptcy.

23 Q: Because there's no business anymore?

24 A. Right. We sorted -- we had -- the
25 landlord, we sorted that out with the landlord.

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2 He got his space back. We went off, we left.
3 He was fine. The only debt we had from that
4 was one lease. We gave them all their stuff
5 back. And so there's really nobody that's
6 fighting over anything, so we're just going
7 to -- everybody goes back to their corners.

8 Q. Did the Debtor --

9 A. It was sort of a clean situation.

10 Q. Did this Debtor, Southeastern
11 Hospitality, did it ever advance money to the
12 Deep End to pay its bills?

13 A. I don't believe that it did. There
14 could have been an intercompany transfer. I'm
15 sure there was intercompany transfers for
16 various reasons. But it never loaned the Deep
17 End money, no.

18 Q. So the Deep End doesn't owe the
19 Debtor money?

20 A. I don't know the answer to that
21 question.

22 Q. And if it did --

23 A. If it did, I could find that out for
24 you, but I'm not certain.

25 Q. Well, if it did owe money to the

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2 Debtor, that would be for monies that were
3 intercompany transfers?

4 A. If it does owe money, it would most
5 likely be somebody got the better -- some
6 entity got the better of the other entity in
7 some exchange of goods or services, like they
8 never paid for a case of whiskey or something.

9 Q. Do you have any idea what the amount
10 that might be owed by the Deep End to --

11 A. I don't, but I could find out if you
12 want to know.

13 Q. What is Paladin Hospitality?

14 A. It's the entity that the Pinewood
15 operates under.

16 Q. The Pinewood being a different
17 restaurant?

18 A. It's our first and oldest restaurant,
19 yes.

20 Q. And how is that related to the debt?

21 A. Same management team.

22 Q. And is it the same -- or I think you
23 said at one point that you owned 100 percent of
24 that? Is that still --

25 A. 100 percent of the stock, yes.

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2 Q. Stock. Is that going to be diluted
3 by virtue of this Dau Investment?

4 A. She'll own 10 percent of that, yes.

5 Q. So you'd own 90 percent?

6 A. Yes.

7 Q. And what is Paladin's status right
8 now?

9 A. It's -- we've worked all our stuff
10 out with that landlord. We are performing our
11 stuff and, you know, life's getting better
12 every day.

13 Q. Is Paladin in bankruptcy as well?

14 A. Yup.

15 Q. And in response to the document
16 requests that we talked about earlier, and in
17 response to the interrogatories, we were
18 forwarded not only this spreadsheet that is
19 Exhibit 8, but also a projection for the
20 Paladin. What does that have to do with this
21 Debtor's ability to perform under the lease?

22 A. It's just another -- it's another
23 entity that has an impact on our group. So,
24 you know, it's sort of like if you have a bad
25 experience at one restaurant and you go to

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2 another one, does that carry over? Does it
3 impact you? If you have a great one, do you
4 want to go to another one? So like, in the
5 sense that we're a restaurant group and we have
6 two restaurants, they're interconnected in that
7 way.

8 Q. But do the -- is it projected that
9 Paladin would somehow financially support this
10 Debtor in connection with its ongoing
11 operations?

12 A. I don't foresee that. I don't think
13 that they -- I mean, they've always ran -- run
14 more independently. And, you know, I would
15 expect them to go back to running
16 independently. Financially independently, not
17 operationally.

18 Q. What is Spaghet LLC? We talked about
19 that as well.

20 A. The corporation that Bar Americano
21 and Bar Crema operated under. That's how we
22 know this nice lady there.

23 Q. And what -- again, how is that
24 related to this Debtor, Southeastern
25 Hospitality?

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2 A. It's another restaurant that the
3 management team ran.

4 Q. What was the ownership structure in
5 that one?

6 A. Oh, man, I can't remember. I believe
7 I owned 51 percent of that.

8 Q. And some of the other same
9 management?

10 A. Same group, yeah. Dau, Mike, Julian.

11 Q. And what is the status of Spaghet
12 now?

13 A. It's Chapter 7.

14 Q. We talked about 10 Apart LLC. How is
15 that related to the Debtor?

16 A. 10 Apart is the entity that we formed
17 that was going to be the corporate operator of
18 this group. And that LLC that was formed, it
19 has no revenue, it has no sales, it doesn't do
20 anything. It's just dormant at the moment.

21 Q. And its status is it has no
22 operations at this point?

23 A. Correct. We are going to use it for
24 something in the future, probably, but I don't
25 know what yet.

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2 Q. And that entity did not file for
3 bankruptcy; correct?

4 A. Correct. And Proof, though, the
5 retail product did not file for bankruptcy.

6 Are you familiar with that product?

7 Q. I've seen some references to it.

8 A. It's a retail product. It's not a
9 restaurant.

10 MS. TZOBARI: Can we take a
11 five-minute break?

12 MR. LEVIN: Sure.

13 (Thereupon, a brief recess was taken.)

14 BY MR. LEVIN:

15 Q. Before the break, Mr. Cloud, we were
16 talking about various entities that you might
17 have an interest in.

18 What is Next Wave Consulting LLC?

19 A. It's my media consultancy.

20 Q. And how is that related to the
21 Debtor, if at all?

22 A. It's not. Other than I'm involved in
23 both.

24 Q. Do you own 100 percent of Next Wave?

25 A. I own a third.

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2 Q. A third. And what is its status? Is
3 it --

4 A. It's operating.

5 Q. Do you work for that company?

6 A. It's my company. I have two
7 partners. It's a consultancy.

8 Q. Does it do any work for the Debtor?

9 A. No.

10 Q. Aside from the entities we've talked
11 about, are you involved in any other entities
12 at this point in time? And just to go back and
13 refresh your recollection, we talked about Deep
14 End, Spaghet, Paladin, 10 Apart and Next Wave.

15 A. I mean, there are -- I have other
16 endeavors and other things. I'm trying to
17 think of anything that's relevant. I can't
18 think of anything else that's relevant. There
19 might be, but I don't -- I can't think of
20 anything off the top of my head.

21 Q. And we talked a little bit about Dau
22 Group Investments LLC. And I believe you
23 testified that they're both a lender to and --
24 well, at least they've advanced money to --

25 A. Ventured that, yes.

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2 Q. And -- and have an equity interest in
3 the Debtor. Who owns Dau Group Investments, do
4 you know?

5 A. It's a family company, as far as I
6 know. I've never asked her to -- I've never
7 felt like it was appropriate for me to ask her
8 the details.

9 Q. Do you have any equity interest in
10 Dau?

11 A. I do not.

12 (Thereupon, Exhibit 9 was marked for
13 identification.)

14 BY MR. LEVIN:

15 Q. Mr. Cloud, the court reporter has
16 handed you a document labeled Exhibit 9 for
17 purposes of this deposition.

18 It's a Second Amendment to Operating
19 Agreement of Southeastern Hospitality LLC.
20 This was a document, I will represent to you,
21 that was produced by the Debtor in connection
22 with our discovery requests.

23 Have you ever seen Exhibit 9 before?

24 A. Yeah.

25 Q. And if you'll flip to the last page,

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2 there's a number of signatures on there, but
3 for Southeastern Hospitality, is that your
4 signature?

5 A. Yes.

6 Q. And then also below for -- under the
7 members?

8 A. Yes. This hasn't been executed by
9 Teresa yet, though.

10 Q. You anticipated my question. I
11 notice that it is not signed by either Drew
12 Smith or Teresa Dau for Dau Investment or Dau
13 Group Investment.

14 Has this been fully executed, to your
15 knowledge?

16 A. No.

17 Q. And is the -- is this the document
18 that we were talking about earlier that --

19 A. Once we get over the hurdles of all
20 this, we will submit the process and go through
21 the process correctly and make sure everything
22 is documented and filed and whatever, but we
23 haven't done it yet because we have been
24 distracted by this. But this is how it will
25 be, assuming Jamestown has no issue, and I

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2 don't think they will.

3 Q. This is anticipated to happen at some
4 point in the future?

5 A. That's correct.

6 Q. If you turn back to the first page.

7 A. It's been negotiated.

8 Q. The percentage interest for the
9 voting units listed there, this, again, is not
10 what currently is the situation. This is
11 what's anticipated to be the ownership of
12 Southeastern if this ever gets --

13 A. Once fully executed, yes.

14 So if you'll notice -- I don't know
15 if you have the original one, but it would be
16 on file with Jamestown -- Mike would be missing
17 from this, but not missing from the past.

18 Q. Mike?

19 A. Mike Blydenstein. And Teresa's
20 interest has gone up 5 percent. So there's two
21 major changes. Mike's going -- leaves and
22 Teresa goes up 5 percent. And the remainder is
23 re --

24 Q. Reallocated?

25 A. Yes. I don't anticipate Jamestown

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2 having any issue with this, but they haven't
3 been -- I haven't talked to them about it.
4 They don't take my calls at the moment.

5 Q. Was this -- is this reshuffling of
6 the membership interest, let's call it, is this
7 in response to this \$75,000 that --

8 A. That's why her interest went up.
9 Yes.

10 Q. So her interest was originally
11 20 percent?

12 A. That's correct.

13 Q. And it's anticipated to go up
14 25 percent in reflection of, at least in part,
15 the \$75,000 that was advanced?

16 A. Assuming we execute, yes. Assuming
17 we execute fully and no one has any issue.

18 Q. Have you had or has the Debtor had
19 any discussions with any party regarding the
20 terms of a potential Chapter 11 plan of
21 reorganization?

22 A. Say that one more time.

23 Q. Sure. Let me give a little
24 background. Do you know what a Chapter 11 plan
25 of reorganization is?

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2 A. I do.

3 Q. Has the Debtor had any discussions
4 with any party regarding a Chapter 11 plan?

5 A. Our attorneys.

6 Q. Aside from your attorneys? I don't
7 want to hear what you had to say about that.

8 A. No.

9 Q. Have you personally had any
10 discussions with any party about what a
11 Chapter 11 plan might look like, aside from
12 your attorneys?

13 A. I mean, I'd get calls from debtors
14 before we got into bankruptcy. That's the only
15 other people I ever talked to.

16 Q. When you say debtors, do you mean
17 creditors?

18 A. Creditors. I'm sorry.

19 Q. And since the bankruptcy, have you
20 talked to any creditors about what the terms of
21 a Chapter 11 plan would look like?

22 A. I have not.

23 Q. When do you anticipate -- when do you
24 anticipate filing a Chapter 11 plan?

25 A. I would hope soon after we -- this

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2 resolves.

3 Q. And do you personally have any
4 thoughts about what that Chapter 11 plan might
5 look like?

6 A. All the thoughts I have are based on
7 what Will and Sam have -- and I have discussed.

8 MR. LEVIN: That's all I have.

9 Samantha, do you have anything?

10 MS. GUNNISON: I do not.

11 MS. TZOBERI: I have a few questions.

12 THE WITNESS: Sure.

13 FURTHER EXAMINATION

14 BY MS. TZOBERI:

15 Q. As to when you discussed the menu
16 changes, can you give me a little bit more
17 detail? Has there been material changes in the
18 menu?

19 A. I mean, no. Material changes, no.
20 Are you asking -- I mean, we're not allowed to
21 change it into a Mexican restaurant, so that
22 would be a material change. We would have to
23 get approval to do that. We'd have to want to
24 do that, which we don't. But yeah, we're not
25 allowed to change the restaurant into a Thai

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2 place.

3 But, you know, when I say change the
4 menu, I mean, more stuff that the customer
5 wouldn't even really notice, I don't think.
6 It's like how a dish is constructed, so that it
7 costs less to make the dish and has a shorter
8 pickup time.

9 I don't think any of you in the room,
10 unless you had worked in a restaurant or worked
11 in a commercial kitchen, would even know why
12 that's different.

13 You know what I'm saying?

14 MS. TZOBARI: Go off the record for
15 one second.

16 (Off the record)

17 (Thereupon, Exhibit A was marked for
18 identification.)

19 BY MS. TZOBARI:

20 Q. I'm going to hand you what I'm
21 marking as Exhibit A.

22 A. This one is 2012.

23 Q. Can you tell me what that document
24 is?

25 MR. LEVIN: I'm just going to

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2 interpose an objection, just for the
3 record. Obviously, we're reserving all
4 objections for purposes of the hearing. I
5 am reserving objections that I have not
6 seen this document prior to today, prior
7 to about 10 minutes ago. But you're
8 obviously free to ask whatever questions
9 you like.

10 THE WITNESS: This is the expansion
11 and replacement of the -- of the forecast
12 that we provided in discovery that we
13 found errors in and we wanted to replace
14 it and expand it.

15 MS. TZOBARI: I don't have any
16 further questions.

17 MR. LEVIN: I have no questions.

18 (Whereupon, at 1:24 p.m., the deposition
19 was concluded.)
20
21
22
23
24
25

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2 CERTIFICATE

3
4 I, the undersigned authority, hereby
5 certify that the foregoing transcript, page 1
6 through 126 is a true and correct transcription
7 of the deposition of Earl E. Cloud, III, taken
8 before me at the time and place set forth on
9 the title page hereof.

10 I further certify that said witness
11 was duly sworn by me according to law.

12 I further certify that I am not of
13 counsel to any of the parties to said cause or
14 otherwise interested in the event thereof.

15 IN WITNESS WHEREOF I hereunto set my
16 hand and affix official seal this 7th day of
17 May, 2019.

18
19 _____
20 RANDI GARCIA, COURT REPORTER, RPR

21
22 NOTARY PUBLIC
23
24
25

J U R A T

I, _____, do hereby certify under
penalty of perjury that I have read the foregoing
transcript of my deposition taken on _____;
that I have made such corrections as appear noted
herein in ink, initialed by me; that my testimony as
contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 2019,
at _____.

Earl E. Cloud, III

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg.	No.	Now Reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2019.

(Notary Public) MY COMMISSION EXPIRES: _____